

U.S. DEPARTMENT OF COMMERCE

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NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION

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MARINE FISHERIES ADVISORY COMMITTEE

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Wednesday

June 30, 2010

The Marine Fisheries Advisory
Committee met in the Prospector Hotel, 375
Whittier Street, Juneau, Alaska at 8:30 a.m.
Alaska Daylight Time, Tom Billy, Chair,
presiding.

MEMBERS PRESENT:

TOM BILLY, Chair
HEATHER D. McCARTY, Vice Chair
TERRY ALEXANDER
RANDY CATES
ANTHONY CHATWIN
PAUL CLAMPITT
PAMELLA J. DANA
BILL DEWEY
EDWIN A. EBISUI, JR.
MARTIN FISHER
KENNETH FRANKE
CATHERINE L. FOY
STEVE JONER
GEORGE C. NARDI
TOM RAFTICAN
KEITH RIZZARDI
DAVID WALLACE

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CONSULTANTS TO MAFAC:

RANDY FISHER

VINCENT O'SHEA

STAFF PRESENT:

MARK HOLLIDAY, Designated Federal Official

PAUL DOREMUS

JIM LECKY

HEIDI LOVETT

KARI MacLAUCHLIN

MICHAEL RUBINO

ERIC SCHWAAB

ALSO PRESENT:

HEATHER BRANDON

BILL BROWN, Recreational Fisheries Working
Group

M.B. CERNE, USCG

DAVID COWFORTH

KATHERINE FILE

TOM GEMMELL

STEPHEN GRABACKI

GLENN HAIGHT

MICHELLE RIDGEWAY

RANDY RIVE

MARK VINSEL

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C-O-N-T-E-N-T-S

Aquaculture Update by Michael Rubino	12
Recreational Fisheries Summit	60
presentation by Eric Schwaab	
and Ken Franke	
Protected Resources Program	115
presentation by Jim Lecky	
NOAA Next Generation Strategic Plan	209
presentation by Paul Doremus	
Budget and Strategic Planning	247
presentation by Mark Holliday	
Public Comment	274
Protected Resources Subcommittee	300
Meeting	
Adjournment	427

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P-R-O-C-E-E-D-I-N-G-S

(8:35 a.m.)

CHAIR BILLY: I'd like to call back into order the MAFAC meeting. And at the outset I'd like to thank, on behalf of the committee, Heather and Cathy.

And I know there were others involved, and I'll let Heather acknowledge them in a minute, for the outstanding party last night. Once again, we've raised the bar and -- thank you very much.

(Applause.)

Outstanding venue, outstanding food, and outstanding people. How can you beat that?

MR. MARTIN FISHER: Don't forget the music.

CHAIR BILLY: Oh, yes.

Oh, that's right.

MR. MARTIN FISHER: That was on the record, Tom.

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CHAIR BILLY: Yes. Well, boy. All right. So, Heather, I know you want to also acknowledge some people.

MS. McCARTY: I do, if you don't mind. Thank you. I didn't get a chance to make a little thank you thing last night because everybody was scattered around, so I wanted to thank of course, Cathy is the co-host. She did most of the work, frankly. She's working late. Thank you for two days.

And, of course, Jim Balsiger, who is also a co-host and did a lot of carrying things around mostly.

And I also wanted to thank everybody that donated both for, you know, the side dishes and the fish. Martin and Ed who caught the black cod, and Ed who made the sliced raw stuff.

And the people who donated the salmon was a company called Pacific Seafoods, who you have probably heard of, out of Kodiak. They donated the sockeye. And APS donated

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the halibut.

And the Alaska Scallop Association, right? There's Arni -- donated the scallops. Of course, Arni Thomson, who's the head of UFA here in Alaska, cooked them. That was pretty cool.

And then the Alaska Crab Coalition, ACC, donated the king crab for the crab shooters. And thanks so much to Arni for that.

MS. FOY: Smoked salmon came from --

MS. McCARTY: Smoked salmon.

MS. FOY: -- Kodiak Island Smoke House and the resident seafood expert there, fish tech, who's Chuck Crapo, he's a magician with smoked fish. He did the salmon jerky and some of the cold food.

MS. McCARTY: And then the oysters came from Pacific Pearl, I think is the name of it. It's an oyster farm on, at Kake, and then they were flown in that very day. So

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they were fantastic as well. Thanks to all those people for their help and donations.

CHAIR BILLY: Yes. Thanks. Okay, we also have a couple of administrative announcements. So, Mark?

MR. HOLLIDAY: Thanks, Tom. Welcome, everybody, back to the meeting. And to our guests, just a reminder, if you're in the audience and you haven't signed in at our table outside, we'd appreciate that for the record. These are public meetings and we document both guests and members who are in attendance.

We do have on our agenda today a public comment period. Any member of the public who wish to address directly to the committee, we've set aside some time at the, 2:15 this afternoon for public comments, if there are any.

Just a note on the, relative to the agenda, we are going to be breaking out into subcommittees this afternoon. We're

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going to have two subcommittees meeting.

We have this room for the majority of the people, the larger committee will stay in here. That'd be the Protected Resources group.

Recreational Fisheries

Subcommittee, this back room here is right adjacent to us and we'll, they'll meet in there. And that will be at the three o'clock hour.

And the last piece, we'll also break out tomorrow morning into subcommittees, if you'll look on your agenda for Thursday morning. Strategic Planning, Budget, and Program Management Subcommittee and the Commerce Subcommittee will meet. And we'll flip a coin to see which committee meets in the big room and the anteroom in the morning. Or we'll figure it out before then.

And the last piece, we have a special unexpected treat courtesy of our great anglers for lunch planned for tomorrow.

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So the -- Martin described a little bit of it, but some of us were not here at the end of the meeting yesterday. So I'll go over it again because we need some logistical information.

Martin, did you want to describe it in your, the nature of the restaurant and what the plan would be from the --

MR. MARTIN FISHER: I'll spare you the gory details about the fishing. The restaurant's a little local bar and grill down by the airport and Gail is the quintessential Juneau chef, I think. We ate there -- she cooked up our fish the other day and it was awesome.

It's kind of a bar and grill and it has a little bit of local color to it so, it's going to be a great time.

It's like \$12 a piece and that's all the halibut you can eat and all the sides you need, fried zucchini and mushrooms and she's going to have clam chowder.

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And what I have to find out how many people want jumbleberry pie with salmonberries that she's picking today.

MR. HOLLIDAY: Great. So in order to accommodate this, we're going to have to modify the agenda in order to allow the time for us to get out and back to the restaurant and deal with the logistics.

So the plan would be to start tomorrow morning at 8 a.m., rather than 8:30. That would give us a little bit of extra time.

And we'll try -- we're going to shave some time off the afternoon session as well. We'll still end our planned time for 4:30. So those who have plans after the meeting, or flights, whatever, we're not going to affect that. But we'll start a little bit earlier in the morning.

Our plan would be then to probably break around 11:30. And we've allocated two and a half hours to do this trip out and back,

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with the logistics, eat, and get back in our seats and start again at 2:00.

MR. MARTIN FISHER: Doc, that's a little early. She wants us there close to 1:00 to eat.

MR. HOLLIDAY: One o'clock?

MR. MARTIN FISHER: Yes.

MR. HOLLIDAY: I wasn't aware of that.

MR. MARTIN FISHER: Yes. No, it's -- sorry. Miscommunication.

MR. HOLLIDAY: So we'll --

CHAIR BILLY: We'll manage.

MR. HOLLIDAY: -- we'll adjust that. But then, we'll have a two-and-a-half-hour block and we'll work on what in the agenda would have to accommodate being there for 1:00. Sorry, Martin, I missed that point.

MR. MARTIN FISHER: That's okay.

(Whereupon, the above-entitled matter went off the record at 8:42 a.m. and resumed at 8:46 a.m.)

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CHAIR BILLY: Okay. Our first presentation and discussion this morning focuses on care of aquaculture. This committee is, in the recent past, done quite a bit of work in this area, encouraging NOAA to formulate not only a policy but a strategic plan and seek additional resources to support this area.

Mike Rubino is here with us and he will share the progress that's been made, the work that's been done on refining the policy through a process that started a few months ago. So Mike, the floor is yours.

MR. RUBINO: Thank you very much.
Good morning.

Last September, Dr. Jane Lubchenco announced that she would like the agency to develop a new aquaculture policy. And in the press release and information that went out at that time, she indicated that this policy would address all forms of marine aquaculture, that it would protect ocean resources and

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marine ecosystems, address fishery management issues, both by aquaculture, and enable sustainable aquaculture that adds to U.S. seafood supply, and supports recreational and commercial fishing, creates employment opportunities, keeps working waterfronts going.

So that was our overall charge. In discussions with her last fall, it became clear that she and the new administration wanted us to reach out to a broad array of stakeholders and go through a public process, so that we had a good reflection of what people in the country who cared about this issue thought about and that that was reflected in the new policy.

So that -- the way we did that, after, you know, going back and forth with our management, was to hold a series of listening sessions around the country. And we held a listening session in each one of the NOAA regions.

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We then had a national call-in to catch anyone who wasn't able to attend a listening session. And we also had online comments open for, during this period.

So that's where we held the listening sessions.

The only date that's incorrect is I think the Anchorage meeting was May 29, not April 29.

So we logged a lot of miles in airplanes with a small group. But it was really in some ways quite inspirational. I mean, the comments that we got through the listening sessions, and especially the written comments, were very thoughtful, very constructive in terms of the way they were thought through.

So I think, as staff, we felt like we had gotten a very good cross-section representation of views. You know, instead of an occasion to say, time out, I know that MAFAC had charged us a number of years ago

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with developing a ten-year plan, which we continue to implement.

But new administrations want to be able to take stock, reassess, and so it was a, it's been an excellent opportunity to do that.

And we've gotten a lot of really rich and diverse ideas about how we should go forward.

For the listening sessions and for the online comments, we had put out a series of trigger questions. And I think those are provided to you as part of your materials for this meeting as well.

You know, what are the opportunities, impediments, what about environmental and economic questions, what should be, you know -- where should we focus our research, what are the key innovations that we need to be working on in aquaculture, what about outreach, what about partnerships, what about international, because we import so much of our seafood and so much of that's aquaculture, and how do we, how can we be

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engaged in the global picture.

Now we're, a small group of us, are distilling all this information and actually writing a draft policy.

That draft shortly will go to Sam Rauch and Eric Schwaab for review and then to the NOAA level, the NOAA policy shop for review.

Once they're satisfied, it would go through inter-agency review within NOAA. And then the idea is that it would be issued as a draft in the Federal Register for public comment.

So everyone will get an opportunity again to be able to make comments, but this time, focus specifically on the language in the policy itself.

And the policy is likely to be part policy, part priorities for the next few years, and part guidance for aquaculture and federal waters. So, either three parts or two parts, plus an appendix.

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And then there may be sort of a page or so of background, you know, why are we doing this, what kind of process did we go through.

We've recommended a 60 day public comment period. I think NOAA, the NOAA level would go along with that. But in other words, a period long enough so that people have time to digest this and prepare thoughtful comments back.

Once we, the public comment period's over, we'll reassess, it might be revised. It'll then go through the internal review process again and be issued as a final policy.

How long does that take? I don't know. Hopefully we'll get it done this calendar year. But, you know, at the NOAA level they've got a few other things on their plate, like an oil spill, and so fighting for attention is, may not be easy.

The other thing I wanted to leave

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you with, before we get your ideas on where we should go and your ideas, I wanted to give you sort of the top ten things we heard during the listening sessions and in terms of online comments.

Admittedly, this is a staff of people reviewing this. So any of you can go online and look at these comments yourselves.

So this is the top ten list, and unlike Letterman, I'm not going to do it backwards, but forwards.

One: United States needs more local seafood supply, and sustainable aquaculture needs to be a part of that supply, rather than imports.

Two: The NOAA aquaculture policy should protect wild stocks in the environment.

Three: NOAA should provide leadership in coordinating marine aquaculture, where appropriate, but be respectful and mindful of states' rights.

Four: NOAA needs to do a better

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job of synthesizing and providing the latest science knowledge, especially on environmental and economic effects of aquaculture.

Five: Done well, aquaculture represents an opportunity to support local culture in coastal communities. So I think Barry Costa-Pierce said we need to get to the point where aquaculture becomes culture if it's going to move forward.

Six: It's time to do a better job of integrating fishing and aquaculture. Rather than thinking of them separately, thinking of them as a range of technologies to produce seafood, and that this synergy will help to maintain working waterfronts and sustain coastal communities.

Number seven: But, to do that, in part, competition between aquaculture and other uses of the coastal and marine environment need to be addressed to increase local support for aquaculture.

Eight: We heard strong support

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for, and strong opposition to, offshore aquaculture.

Nine: NOAA must be more involved in the development of innovative aquaculture, including new techniques such as integrated multi-trophic aquaculture, land-based re-circulating systems, and open ocean aquaculture.

And ten: The United States needs to get more mollusks into the water through a combination of shellfish farming and shellfish restoration, and that that's very important in terms of food supply, water quality, and habitat restoration.

So that was sort of our top ten list of what we heard and what we read. So for the balance of the hour, I would very much like to hear your thoughts on the policy and how we should proceed. Yes. So.

MS. McCARTY: Mike, do you have a list of those ten that you can flash up there for us?

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MR. RUBINO: Well, I didn't provide you with a list because this was really just a staff list at this point.

MS. McCARTY: Okay.

MR. RUBINO: I think going forward, I'd like our colleagues at the NOAA level to look through this and make sure that this reflects what NOAA as a whole read through this.

And as I said, you can go to our website and pick through and read as much as you would like in terms of the comments. The listening sessions were summarized in sort of a page or two each of what the key points that people provided during them. Yes.

CHAIR BILLY: Tom?

MR. RAFTICAN: You ranked these?

MR. RUBINO: No, but they weren't really ranked, they were just --

MR. RAFTICAN: Well, you said that they were ranked and I was just wondering if it was the number of comments on each. I

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mean, was it statistical or was it just the overall.

MR. RUBINO: No, I don't think that was really a ranking. That was more, these are the ten things we heard. If you were to pick ten things and try to summarize all the information, rather than the first thing we gave you was the thing we heard the most of.

MR. RAFTICAN: That's why --

MR. RUBINO: Although in some ways, it probably was the thing we heard the most of. I think there was broad agreement that we need more marine aquaculture and sustainable aquaculture. But we need to do it in a way that has local and regional support, and to do, you know, and to resolve the potential conflicts that exist to go forward.

So I think proponents and skeptics alike were saying that. It was more how we go about doing it where there was disagreement.

CHAIR BILLY: Okay. Vince?

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MR. O'SHEA: Thanks, Mike. I just -- same comment I probably made three or four years ago, that I'm pleased to see the, you know, the states' rights and, you know, the role of the states have on your list.

And I just continue to encourage you, obviously that's an important issue for my constituency. And going forward, whatever NOAA decides to do, it needs to be with bringing the states along as well, to either opt in or opt out.

MR. RUBINO: I think some of the most detailed comments that we got were from state government agencies, as well as from some of the councils and some of the commissions --

MR. O'SHEA: Right.

MR. RUBINO: -- like the Marine Mammals Commission. And this, these are state agencies both on the sort of the marine management side as well as on the production side, sort of more the aquaculture. So we

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heard -- that came through loud and clear.

MR. O'SHEA: Good.

CHAIR BILLY: How many total comments?

MR. RUBINO: There were about 350 people who participated in the listening sessions and we got around 180 comments.

CHAIR BILLY: Okay. All right. Thanks. Terry?

MR. ALEXANDER: I just wanted to say that I think aquaculture needs to be pushed a little more here, instead of importing stuff from away.

You know, we're losing our, in New England, we're losing our markets everyday to imported fish. And if we had at least some domestic fish to take up that slack, you know, at least the country as a whole wouldn't lose those markets to foreign flagged vessels with no restrictions on them.

CHAIR BILLY: Thanks. Randy?

MR. CATES: Thanks, Mike. When

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the listening session was coming to Hawaii I had a long talk with a former MAFAC member, John Forster, and we started talking about the listening sessions.

He informed me that the first listening session NOAA held was in 1980 or '81. We've been talking for a long time in this country.

I've been involved in it 11 years.

I've been paid to go to D.C. three times and I've paid my own way six times in 11 years, talking about offshore aquaculture. Since I've been a member of MAFAC, MAFAC supported offshore aquaculture and aquaculture.

The reason why offshore aquaculture is the buzzword is because it's the only way to have meaningful production in the U.S. Land-based plays an important role, but anybody that's involved in aquaculture will tell you that there's going to be great limitations to onshore or nearshore. It's offshore where we need to be. Everybody's in

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pretty much agreement on that.

Clearly, we have lost the political will. I can say that, some people, you know, can't say that. This administration, I believe, has lost the political will to move this forward and we're going to be talking about it for a long time.

So my question to Mike and to the MAFAC will be, should we have a plan B and what should it be? Because offshore aquaculture is not going anywhere. And in fact, we've taken serious steps back.

UNH pulled all their cages, Puerto Rico has pulled their cages. The two companies in Hawaii aren't really expanding. There's no meaningful forward movement. We're going backwards.

So should we have a longer term plan and think about hatchery technology, or outreach -- what should it be?

But the path we've been on for the last five, six years is not working. And

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everything that I'm seeing under this current administration, it's stall and delay tactics to be quite frank. We've talked the thing to death.

MS. DANA: Why have they pulled their cages in, like, Puerto Rico or UNH?

MR. CATES: Can't do business, can't move forward.

MS. DANA: No market, or?

MR. CATES: No, no, there's a market. Can't get -- can't expand. Funding -- UNH is a funding issue. I mean, George, maybe you can talk to that.

MR. NARDI: Yes, that's -- you're right. It's funding.

MR. RUBINO: They couldn't get their permits to stand.

CHAIR BILLY: They're still in the process of trying to get permits to stand in Puerto Rico.

MR. CATES: I mean, that's just a reality of it. Politically, there's -- it's

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simple, not there. So either MAFAC, as a group, we've got to have a plan B or we've got to be more forceful on the aquaculture ten-year plan.

We've got to do something and we've got to make a decision, otherwise we're going to be here in another three years and we'll probably have a very similar update of talking.

CHAIR BILLY: Okay. Other comments? Yes, Bill?

MR. DEWEY: By and large, I agree with Randy's comments, with one exception and that is, as someone who does shellfish culture in the nearshore. I disagree with there isn't more potential to do more nearshore.

MR. CATES: I would agree with that, in fact, I'm heading back nearshore. But it's got its limitations.

MR. DEWEY: That's right. But some of things that were identified in the top ten list, there's one there that, you know, is

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trying to address the user conflicts, which is one of the things I've been adamant about. That's probably our biggest restriction in Washington state to growing our businesses, is the user conflicts and just needing assistance to address that.

And I appreciate -- and NOAA was responsive to that concern with the recent RFP that went out. That was one of the priority areas they issued proposals on, was comprehensive aquaculture planning to try to address those user conflicts.

So I acknowledge that and appreciate it and regret that I was not able to stimulate a proposal to come in from any of our state agencies to try to take advantage of that.

But, Mike, I was curious -- and I asked this the last time you were here. I guess I'm concerned -- comment and a question.

I'm concerned that you're saying it's going to be a year before the policy's done.

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I think we're effectively stalled for a year while you work on that, you know. We're not going to move forward with any significant momentum in the country until that policy's done.

When I met with the House Resources Committee staff earlier this year on the offshore bill, they essentially said they weren't going to conduct hearings until the administration had the new aquaculture policy in place and they knew where the aquaculture, where the administration was going to be on aquaculture.

So they're not moving forward on the House side with offshore aquaculture legislation until this policy's done. At least that's what they indicated to me earlier this year.

Now, maybe that's changed but -- so I'm disappointed to see things stalled. I guess I'm encouraging you to get the policy done sooner than later so we can move past the

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stall.

And then my question was, regarding the ten-year aquaculture plan, obviously you've gotten a lot of input from the public and you're going to revise your policy. Perhaps that's going to change priorities as far as that ten-year plan is concerned.

Do you intend to get that revised as well, along with the policy? And I presume MAFAC would be involved in that effort if you do.

MR. RUBINO: Yes, a couple things.

I think I said at least the timeline we proposed was to get the policy done within the next, you know, before Christmas.

So not a year, but when you do a calendar of all the steps it has to go through, if you have a 60-day public comment period, and then you have to go through the approval steps again, that's sort of what we're looking at. So, you know, November.

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But as I said, because NOAA has this oil spill to deal with, that, I could see that perhaps slipping. But we're certainly going to push.

In terms of implementing the ten-year plan, we continue to do that. I think once we have the policy we will look at that ten-year plan.

As I said, the policy will include a combination of policy and priorities. So those priorities in particular will influence what parts of the ten-year plan we might want to change.

Certainly we heard a lot about -- you know, I think there's broad agreement on sort of 80 percent of these issues. You know, how do we move forward on those in marine aquaculture.

One of them is shellfish. The other is sort of local food supply and sort of better integrating fishing and aquaculture at the working waterfront level.

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I think that as a group and as an administration, one of the key things that will have to be decided is what happens with aquaculture in federal waters, because that is a continuing area of controversy.

So is that something we want to keep working on? Do we put it aside for awhile? You know, can we do all of these things at once. So I think that's part of our collective challenge.

CHAIR BILLY: Okay. Dave?

MR. WALLACE: Well, you know, I just, it just irritates me to no end to constantly be reminded that United States is a third world country. And surely in aquaculture we are a -- we're not even a player. We're below a third world country. And it's outrageous.

And you have to have offshore aquaculture even though it's not financially as expedient as inshore. Or having pens in fjords in Alaska or in Maine, it's much easier

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to manage than trying to manage a pen a hundred miles offshore in the Gulf of Maine.

There are -- you know, and we import -- if we wait long enough, by the time I leave this, and that may be tomorrow after this statement --

(Laughter.)

-- 90 percent of all the seafood consumed in the United States will be imported.

Now, you tell -- somebody in this room make the argument that we're not a third world country. You know, we have to depend on China to feed us. That's really, that's criminal.

You know, this notion that there could be significant environmental problems, cage fish, or aquaculture fish mixing with wild fish is something that happens all over the world all the time.

And we just cannot have -- it's like having an oil spill. If you do enough of

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it, it's going to happen. But is it the worst thing in the world that can happen to this country?

And the answer is we have lots of non-indigenous species that we brought here on purpose. And so I think that's a red herring.

So we as MAFAC members need to support offshore pen fish aquaculture so that the ball can move forward.

NOAA did not block the Gulf Council's request. They didn't support it, but they didn't block it. And what I hope, somebody in the Gulf goes down there and just builds a pen on one of those retired rigs and moves that ball forward to get the -- we're managing by paralysis and we need to get away from that. Thank you.

CHAIR BILLY: Okay. Thanks.
George?

MR. NARDI: Yes. I just -- I agree with the third world aspect, at least in terms of marine aquaculture, for sure.

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And I also, though, wanted to also comment on, you know Vince talked about the states and I think how important that is, because especially on the East Coast, anywhere where we have lots of smaller states that you have to traverse across and go through.

You know, when I have an aquaculture product, the rules in each state is different. And I have to, you know, essentially go to the most cumbersome state and try to make my product get in there, because then the other states might follow along.

And there's a lot of, I don't know if it's miscommunication, or noncommunication going down to the ranks to enforcement.

But, you know, just yesterday when I was sitting here I had an emergency e-mail come up because I had a problem.

And in one state, have to show them documentation that this was a farm product. Even though each fish had a tag in

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it that said farm product, they wanted to know that that state had approved it. And, you know, just had to get them some documentation.

So I think the coordination that, you know, NOAA could play to help, you know, this communication between aquaculture and what it is to various states that, you know, don't have the resources, aren't informed about, you know, this product. As -- that can be more of a support than a barrier to aquaculture.

So I can't underline that -- we're talking about NOAA and the federal policy, but I think we have to support, you know, the states' understanding of what's going on in the big picture.

I think with the support of the states, we'll move a lot of things forward if we can, if we get the individual state support for aquaculture.

Because as has been said, you know, the offshore -- and I agree with Dave,

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it's a tool. You know, when a company is looking at the possibilities, nearshore, offshore, right now that tool is missing from our bag of tricks.

We can't think about going offshore, so it constrains the opportunity to expand and provides us less, I mean less ability to compete in the global market place.

Maybe not so much right now, but certainly down the road, you know, we would want to have all the tools in our bag to compete on a global scale. And we don't right now.

We seem to be running in circles and we've got to focus nearshore. And if we're focusing nearshore we need to make sure we have the states be part of this conversation, even though that might be out of our jurisdiction as MAFAC. But I think NOAA, in regards to aquaculture, needs to work much closer with the states.

MR. RUBINO: Can I ask you a

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follow-up question? I mean, you're also involved with bringing marine species on land to grow them in tanks.

What are the opportunities and constraints there, and is that something we should be doing more of?

MR. NARDI: Oh, I think so. You know, the constraints there in the past has been much more economical. You know, the capital costs of re-circulating aquaculture have been a barrier.

But the technologies over the last decade have been improved. The value of the fish have gone up. So the two have been coming closer together.

So I think there's a time and there's places for nearshore aquaculture where the competition with user groups are positive and where it will be conducive to nearshore aquaculture.

And there's places where you can bang your head against a wall, as a company,

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and you, it's really a non-starter. But we don't want to limit our production of seafood.

So I think yes. I think NOAA's ability to engage in innovation and improving re-circulation technology is very positive for the country in terms of production.

MR. RUBINO: Okay.

CHAIR BILLY: Paul?

MR. CLAMPITT: I just wanted to make a comment, Mr. Chairman, about what Dave was saying about, basically, I think he was saying that it was a red herring, the concern about the danger to wild stocks from offshore aquaculture or inshore aquaculture.

I mean, if you're involved with fishing for that wild stock, it's not a red herring, it's something you're very concerned about.

And there -- and I thought that the list was a well thought-out list that our presenter gave us.

Number two on the list was protect

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wild and I think that's a serious concern. I don't think you can ignore that and say that, you know, growing aquaculture is paramount and to heck with everything else.

I think, you know, you've got to be concerned about your wild stocks. And, you know, personally, I'm not one to, you know, not have things in place to protect those.

You know, I mean, this is definitely a concern in wild salmon farming, or aquaculture salmon farming in Canada with the fish lice.

And there's been some discussion, I don't know if it's true or not, but a lot of people in Canada are very concerned that they've lost some wild stocks or are, you know, being damaged by these fish pens, open water fish pens.

So, you know, I'm all for increasing aquaculture, but I think you do have to protect the wild stocks and you have to protect the commercial fishing interests.

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I don't think we give up one for the other.

CHAIR BILLY: Randy?

MR. CATES: A couple comments. I agree with Paul. I think, if done correctly, you can ensure the safety of wild stocks. And I think you're going to get tremendous support from the industry.

One of the things that I'm concerned about, and I'm not very happy of, is our own industry. And will we be able to stand up to a company that may be not playing by the rules or ethically. Will we be able to stand up to NOAA in supporting the companies that may not be behaving ethically.

It's a real concern. It's going on right now in Hawaii. So we need, our own industry needs to tighten up on that.

I also would think that one thing NOAA can do and should do is educate its own ranks.

One of the biggest problems we've had in Hawaii is the regional office, in

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making, basically, they're making policy in some aspects. But when a permit holder comes in front of them, their recommendation should filter through the aquaculture office in Mike's office and have some common sense put into it.

Some of the rules that they put upon the aquaculture industry, the commercial fishing industry could never live with. Wouldn't even be possible. They couldn't function as a business.

So, you've got to treat things equally, in my opinion. And it's really an education process within the ranks of NOAA.

So we are, have a lot of challenges ahead to say the least.

CHAIR BILLY: Okay. Thanks. Tom?

MR. RAFTICAN: Thank you, Mr. Chairman. Listening to Dave and really, Randy, and if you go back for the four years I've been coming here, and, this is almost a rehash of the same conversation.

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When you look at the form that we have here, like it or not, many of us are somewhat in competition with aquaculture because of our own position, whether it be recreational fishing or commercial fishing.

We are looking at becoming a third world country here as far as food production.

When you look at agriculture, the United States absolutely leads the world in exports of agriculture.

Maybe it's in the country's best interests that we turn this program over to the Department of Agriculture so that we actually get some movement forward on it. NOAA could be an outside contractor that looks at this thing and says okay, fine, here are some rules.

But right now, we've got the competitors writing the rules, so no matter what happens, this thing will never get off the ground.

CHAIR BILLY: Thanks. Bill?

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Where'd he go? Oh, --

MR. DEWEY: So one thought comes to mind here, Michael, and to MAFAC, just from a coordination standpoint, it would be good if your sixty day comment period on the policy corresponded with a MAFAC meeting, so that we could convene and discuss the policy and provide some comment on it, on the draft policy.

And a couple questions for you, Michael. One, you've been working, since you've gotten in your position, you've been working to try to get aquaculture coordinators established in each of the NOAA regions.

And I'm curious how that's working out from your perspective, and also if you've made any progress on getting one located in the Northwest region.

MR. RUBINO: Oh, yes. The question's really about the coordinators for me.

MR. DEWEY: There's another

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question, as well, that maybe you can address, and maybe as part of this. But I know you also have embarked on an effort internally to review aquaculture permitting and ways that you can achieve efficiencies within the federal agencies' review of those permits, and maybe you could comment on that as well.

MR. RUBINO: Okay. We do have coordinators in three of the regions: the Northeast, the Southeast, and the Southwest. And the personnel system is in the process of getting an announcement out for the Northwest and for the Pacific Islands. Budget-wise, we can add two more at the moment.

So those people essentially have my job at the regional level. They report to the regional administrator, who we very much wanted to have, you know, local, regional buy-in. But they coordinate their work with the program office in Silver Spring.

So, you know, we've had them for a couple years now in a few of the regions. And

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I think it's worked out very well in terms of them being able to go around and see things in action, be sort of a traffic cop in terms of requests that come in, provide the link between what the regional offices do and our science centers, feedback information to headquarters. So just -- it's been invaluable, I think, for us to have that.

And part of our effort to sort of, as I would say, call mainstream aquaculture within NOAA Fisheries, to put it eventually on par with fisheries, with protected resources, and with habitat in some fashion.

So we've been able to add additional funding, modest funding, over the past several years going from our science centers, typically to the Northwest Science Center and the Northeast Science Center to work on both progressions.

So to get back to your comment, you know, nothing's going to happen for the next year. Well, I think we need a policy to

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get this whole program to the next level in terms of budget support and in terms of direction, which there are lots of things that we continue to do with existing resources.

And, you know, everything from answering George's questions on enforcement -- we had a seminar a couple months ago at the Northeast regional office to talk about these questions and moving fish over state lines. As we bring more marine species into the barnyard, what are we going to do with them in an enforcement perspective.

We have a group of geneticists at the Northwest Fishery Science Center looking, taking models from salmon stock enhancement and adapting them to this concern about escapes of marine finfish from cages. You know, what about the genetics, what about the restock management.

If we're given more responsibility to manage them, what are we going to require?

So they're writing a white paper

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on that, which will come out later this year for personal computer, for scientific peer review and then public comment, at least a peer view.

In terms of your question about the regulatory front, I've mentioned in the past that we have been asked by our management to look at what the agency's doing on the regulatory front and to try to provide some efficiencies and better information within the agency, and working with Corps of Engineers and other government agencies.

We haven't had the staffing capacity to do that full-blown, but we are working on the shellfish area in particular at the moment.

And in fact, there's another meeting coming up with the Corps of Engineers and with other members of the federal agencies in the Joint Subcommittee on Aquaculture to talk about permitting questions and using shellfish to model.

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CHAIR BILLY: I'd like to -- we've got about five more minutes. And Bill raised an important point in terms of your schedule and our schedule.

Our next meeting is scheduled currently for October 19, 19 to 21.

And what I'm thinking about is how this committee can both be a part of the policy process, as appropriate, and also how we can provide further input in terms of the application of that policy both to your ten-year plan, as you reconsider it, and other outcomes from establishment of the new policy.

So, like your reaction, that period in October sounds a little late in terms of your time frames and working a new policy through the hierarchy in NOAA.

On the other hand, maybe it's possible that once it reaches a certain stage it could be made available to the committee in advance of our meeting, so we could be ready to respond appropriately and provide some

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further input at that time. So I'd like your input or reaction.

MR. HOLLIDAY: Put in information.

MR. RUBINO: And certainly what I can do --

CHAIR BILLY: Yes. Yes, Mark has a comment, too.

MR. HOLLIDAY: Yes, Michael, I'll just -- that's our regularly scheduled meeting. But as we've done in the past, we've also been able to schedule between-meetings conference calls, convene them, publically announce them, to develop a position on something between the regularly scheduled meeting.

So that's also an option to keep in mind relative to your schedule of events over the next month, next year.

MR. RUBINO: I will -- at a very minimum, I will certainly convey your request as MAFAC to my management and to the NOAA policy level.

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As I said, I think the, all of us, all of you, will have an opportunity to comment on the draft individually-- at the moment it's scheduled to come out sometime later this summer for a two month comment period. As I said, I don't know if that will be delayed or not.

So October 19, at the moment, would sort of fall during the period of reconsideration of the draft. So maybe that would work. It might be a couple of weeks late, in terms of an ideal schedule, but I think it's something we try to work with. Does that make sense Eric?

MR. SCHWAAB: Yes. Yes, I'm sorry that I came in on sort of the tail-end of this because of another call I had to participate in, but I caught enough of this conversation to get some pretty good insight.

CHAIR BILLY: So. Okay. And then the other ideas, the, you know, playing some appropriate role in terms of the

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implementation of the policy, at least as it relates to reconsideration of the ten-year plan, and any other areas where we, the expertise that's represented around this table, and the experience, can provide useful input to you as you move forward.

MR. RUBINO: I think that would be very valuable for us in terms of NOAA Fisheries and in terms of NOAA and staff.

I mean, a policy is one thing, but a policy, remember, is an aspirational document. I just wanted to make that clear, too. It's not going to be regulation, it's not legislation, it's not prescriptive. It's, in effect, it's aspirational about what the agency would like to do.

So I think one of our recommendations to management is going to be as you roll the policy out, what are the key things that you're going to do over the next few years to implement that.

And we do have, as an example, we

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have, at least in the President's FY-11 budget request, there is additional funding to look at alternative feeds. So if that survives, that's sort of a no-brainer in terms of what other things to do.

But what other three or four key initiatives, or thrusts, or however you want to put it, you know, should we work on? To get your advice on that I think would be very important.

CHAIR BILLY: Good. Bill?

MR. DEWEY: Yes. I appreciate Michael's final comment there. Actually, I was going to suggest that may be a recommendation we want to consider coming from MAFAC is that, you know, if we're -- obviously there's some frustration around the room here with lack of progress, moving forward with marine aquaculture development in the U.S.

MAFAC make a recommendation that when NOAA unveils this policy, that they have some major high-profile initiative that, you

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know, gets things moving and gets the public's attention to it.

You know, but actually show some national support for both domestic aquaculture -- one of the comments that I was involved in, getting into NOAA, was coordinating from the three coasts a proposal for shellfish aquaculture and restoration initiative, that NOAA might consider as part of this policy. That might be something worth discussing as an option.

CHAIR BILLY: Okay. Okay. Short comments. Start with Heather.

MS. McCARTY: Sure. I can't help but think that I'm hearing a message that offshore aquaculture is kind of moving off the scene. And everybody's who is associated with it sees that happening.

And it sounds as though, in the comments that you got, offshore aquaculture is sort of fading into the background in terms of focus for the aquaculture policy development.

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Is that right?

MR. RUBINO: Well, I think what I said in terms of those ten things we heard is we heard strong support for and strong opposition, or skepticism about federal waters.

But I think if you go a little bit deeper, I think the strong support for is really strong support for more production in the United States, sort of local regional food supply.

And I think the industry groups or the Soybean Association or others are saying no we need more aquaculture production. We'll be happy to have it, it's the path of least resistance.

MS. McCARTY: Okay. Just a follow-up piece of that. I'm thinking that inshore is going to run up straight up against the Marine Spatial Planning Initiative of this administration, and that somehow those two developing policies are going to have to be

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developed sort of simultaneously, kind of hand in hand.

Is that something that you've talked about at that level in Silver Spring or is it going to be independently developed?

It just strikes me that I'm seeing that direction, that it's going to be more inshore focused perhaps. And if so, clearly it will have to be simultaneous with Marine Spatial Planning.

CHAIR BILLY: Yes. Eric, and then a suggestion to Steve Joner.

MR. SCHWAAB: So, just in answer to that question, the opportunity and the placement of aquaculture facilities have been an important illustration on every occasion when we've talked about the benefits of marine spatial planning.

So in sort of the broadest sense, yes. But as it relates to sort of detailed implementation of, you know, sort of any kind of regional marine spatial plan, I mean, we

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haven't gotten there yet. But it's prominently in the discussion.

MS. McCARTY: Okay. Cool.

CHAIR BILLY: I'm going to wrap this up, but we do have a meeting of the Commerce Subcommittee tomorrow morning.

And Steve, you've heard the conversation. I think Bill's idea of perhaps some sort of a recommendation going forward is a good one within the framework of what we've talked about, and we can go from there --

MR. RUBINO: I will be here.

CHAIR BILLY: -- and then the full committee can consider what the subcommittee comes up with. Okay?

MR. JONER: We'll be ready. I just want to, if I can say one thing. I was kind of frustrated after Mike gave the presentation, because reading these comments and so on, there's so much misinformation out there.

And I'm not in them, I'm not

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involved in aquaculture. But I guess I'm involved in truth in biology. And so I'd like to be able tomorrow to address some of that and to, you know, if we spoke about it, making progress.

CHAIR BILLY: Thank you.

MR. RUBINO: Thanks very much for the opportunity to take some time out of your agenda and also to those of you who provided comments on the process. They said they were very constructive and they gave us a lot to work with.

CHAIR BILLY: Thanks. Thanks, Michael. Okay.

I'd like to move on now to recreational fisheries. And in particular we're going to be focusing on the summit that was held and sort of where we go from here. So, Eric, you want to kick this off?

MR. SCHWAAB: Sure, Mr. Chairman.

Thank you. So when I last left you on this topic, I was sitting in a different seat.

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CHAIR BILLY: You were indeed.

MR. SCHWAAB: I'm not sure whether that one was warmer in relation to this topic than the one I'm in now or not. Time will tell.

But we have made, I think, substantial progress and I'll, you know, defer to Ken to a large degree to talk about, you know, some of the details of that.

But we were able to, with your help, name the recreational fishing working group. We were able to convene that group immediately, you know, at the site of the summit in advance of the summit.

For those of you who have not been as heavily engaged in this, the lead up to the summit included a fairly substantial survey-based outreach to summit participants and others in advance of the summit, which allowed us to, through the facilitator, to essentially identify some key thematic areas that formed the basis of the discussion at the summit.

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We said at the summit, and have continued to say since then, that while we viewed the opportunity to sort of reinitiate the conversation with the broad cross-section of recreational constituencies that are out there, the real proof of success of the summit was going to be our ability to use the summit to identify some pretty specific priority action steps that we could commit to, following through on, and then execute on that action plan.

The feedback that we got out of the summit was very positive.

I think that almost to a person, participants felt that the opportunity to engage, the way that the pre-summit survey sort of helped frame the discussion, the ways that small group discussions occurred and then fed into sort of a large group review of various perspectives on each of those thematic areas was very successful and very useful.

Since that time, there's been a

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summary of the summit itself that's been put out by the facilitators.

And then there has been follow-up development of a draft action plan that we put together. And that action plan was the subject of a teleconference of the recreational fishing working group.

So, you know, and again, I'll leave it to Ken to perhaps characterize the feedback from the group, if, you know, you're comfortable doing that, Ken, as it relates to that draft action plan.

But from the perspective of follow-up, we are sort of on two tracks. One is already working on some things that we know were high priority actions that were apparent coming out of the summit.

And then secondly, finalizing and memorializing the action agenda that we can not only hold ourselves accountable to, but that the broader community can hold us accountable to following through on over time.

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So, you know, I think so far, we're on a great track. Much of the credit goes to Ken and the subcommittee here, as well as the recreational working group that has been convened.

CHAIR BILLY: Okay. Good. Thanks. Ken?

MR. FRANKE: Thank you, Mr. Chairman. First, thanks to Mark and his staff and Eric. They did a tremendous job putting everything together.

The action plan is, was rolled out had five goals: improve communications, improve recreational catch effort and status data, improve socioeconomic data on recreational fisheries, improve recreational fishing opportunities, and institutional orientation.

I think as a group, everybody in the conference call that we had after the summit, I'd say they were taskmasters of sorts. Because while they all agreed the

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content, from a strategic planning standpoint was good, it was the Show-Me State.

They said we'd like to see, as a point of criticism, we'd like to see measurable items, action items, and we'd like to see executed missions. Get them done.

I think that was probably the biggest message that I heard from the group. As an example, they talked about they'd like to see improved representation on the councils. Better take a look at my list.

The action agenda drill, they'd like to see it drilled down into measurable action items with deliverables. The, let's see, NOAA staff interact more directly with the fishing community.

I heard the feedback was clear that they'd like to see more direct interaction at a lower level in the field offices with the NOAA staff.

And one other piece was the communication effort they'd like to see

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expanded to include non-electronic media outreach.

So those were independent of the actual action agenda, but those were just points that they saw that we could add to that action list, as far as a long-term effort.

Globally, our next step at the subcommittee level will be to digest the input from the working group and summit and move forward with a strategic planning effort.

On a side note, there was extreme concern expressed regarding the local fishing community in the Gulf regarding the oil spill.

And it wasn't necessarily directly addressed in the action item. But I think Bob Zales put it real well as something that they need resource, they need finance now before there is no fishing industry. They need to make sure that they are in a position to where they can recover and that their businesses don't just end.

So I think that pretty much is a

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synopsis from my view of where we were at. I think the next step, basically, is move forward to subcommittee.

CHAIR BILLY: Okay. Vince?

MR. O'SHEA: Thanks, Mr. Chairman.

I, along with my colleagues Randy and Laurie participated in the summit.

I might -- quite frankly, I was a little bit discouraged about one dimension of it and that was there just wasn't much traction on the concept of the urgency or the need of stewardship and the importance of rebuilding stocks.

There was a lot of talk about getting more fish to the recreational community, which I certainly support.

But, and this is the East Coast perspective, I mean, we have three percent of the red snapper biomass is what the South Atlantic Council's doing. We're in a number of rebuilding species and commission that are depleted.

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And the issue of saying a challenge was to rebuild depleted stocks to give everybody more fish just, at least the table I was at, didn't get any traction.

And I think the challenge for NOAA is that NOAA has a stewardship responsibility.

And if -- but every time NOAA goes in to put regulations on, it's viewed as an attack on the recreational fishery and the industry. There's this conflict.

So I left the summit quite disappointed that the notion of everybody pulling together to put more fish in the ocean was not an outcome of that summit.

And the report that Ken just gave just seems to reinforce that, unless the increased communication is we're going to talk more about rebuilding stocks. But I didn't hear it at that conference. Thanks, Mr. Chairman.

CHAIR BILLY: Thanks. Pam?

MS. DANA: I actually appreciated

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the summit. I don't think it was meant to be all things to, all recreational fishing.

I think it was a fulfillment of a commitment by Dr. Lubchenco to bring together the recreational interests for the first time going forward, many more times, hopefully.

And I appreciated that Eric, in his new role, and Dr. Lubchenco took such a great amount of time to be there.

I think that said more than anything, rather than showing up like most leaders do, showing up for 30 minutes, give their speech and they're gone. The doctor was there over lunch, shaking hands, talking to people, taking that time and that said a lot.

Were there monumental achievements from the summit? No. But it was a start.

We do have someone in the audience, Dr. Bill Brown, talking real repair and also with the Alaska fisheries. And it'd be nice to hear your perspective as well.

MR. BROWN: Sure.

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MS. DANA: And he's on the recreational working group. Excuse me.

CHAIR BILLY: Please, would you step, come up to the table.

MS. DANA: Not to put you on the spot or anything.

MR. BROWN: No, no it's okay. Do I speak to a microphone?

MS. FOY: Bill's on the Alaska Board of Fish. He's used to being put on the spot.

MR. BROWN: Yes, thank you. I learned a lot at the meeting. It was my first meeting like that. It was great meeting people and sharing ideas.

And it was impressive that Dr. Lubchenco came and spent time with us because I suspect she's busy, more busy than most of us.

I think what I came out of there -
- the thing I got most is meeting other fishery people from around the country. We

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had very similar views, I mean, very similar concerns.

Overwhelmingly, I got a sense of frustration from people saying here we're in D.C., they're paying to send us here, we talk about these issues, when are they going to do something?

When are we going to get to truly address allocation issues. When are we truly going to get the data on socioeconomic events so it's going to affect the issues on who gets what and that sort of thing.

I mean, it was my first meeting, so I'm not yet frustrated. It was good to have a follow-up, to have everyone talking on the telephone and get these issues there. But it's time to do something.

You know, I'm sure we would have done something had it not been for that little oil spill in the Gulf. That's taken some time away from NOAA.

But it would be, in my opinion,

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really a disappointment, a terrible disappointment, if a year from now we don't have actual action items, if we don't have real policies that came out of the recreational fisheries seminar. That's my comments.

CHAIR BILLY: Okay. Yes, Randy?

MR. RANDY FISHER: It seems to me that the real, where the rubber's going to meet the road is what happens in 2012 budget development process, because you're not going to solve an issue of allocation between recreational, commercial immediately, because part of that's going to be solved by the information we gather by the recreational people being able to prove the value of what they're doing.

But, I mean, if we're not part of that budget development, and be able to feed in what we need, then I think the whole thing was a joke.

State of California's broke.

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They're on furlough every other Friday. We've run all the recreational data down there. So how's it going to work when they're on furlough. We need more money to keep the system going.

So I think it's going to be really important for NOAA to come out and ask us what's it going to take to keep it going, and what's it going to take to really make this thing work in the future in the Gulf or on the East Coast. We don't even have licenses in some cases.

So my fear on the West Coast is that you're going to be dumping money on the East Coast because they don't have any information. And I'm going to be watching that really close.

So let us help you develop a budget.

CHAIR BILLY: Other comments?
Okay. So what's the game plan? I mean, I understand what's happened today, but what

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happens next?

What, you know -- and in particular then, how can this committee as a whole, the Rec Fish subcommittee as part of it, play the appropriate role to move this forward, push this ball down the field. Yes, Vince?

MR. O'SHEA: Yes. Thanks, Mr. Chairman. Maybe I should just take the message from the dead silence after my comment as the answer to my question.

But, I mean, isn't that a fundamental issue that's on the table here is that why isn't -- I mean, if NOAA has the responsibility to rebuild stocks and to exercise stewardship responsibility, then why isn't a recreational strategy built to include that mission with the recreational community as a partner in it?

It seems that if we don't frankly address that, then aren't we -- all the other things that -- you know, I've got stocks that

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if we could just get to the rebuilding, then people that want reallocation would get far more fish if we just rebuilt the stock, rather than try to reallocate 10 percent from commercial to recreational. Thank you, Mr. Chairman.

CHAIR BILLY: Ed?

MR. EBISUI: I just wanted to, well, maybe a little late, but I wanted to respond to what Vince's question was.

I think that the, you know, the conservation and ethic and aspect is really implied. Because one of the things that they spoke about was a need for data. And the data is what's on the drive, the conservation regulations and allocation issues and everything.

So I know the members of the task force from Hawaii, I know how they think. And from their perspective, I'm certain that all of this effort was for the sake of the stocks.

It may have never have been

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articulated specifically, but I think that was their intent.

MR. FRANKE: Mr. Chairman, I'd like to make a comment. I agree with what Ed just said.

The underlying current was clearly stock assessments, improved communication to get that data through the states to NOAA. But more importantly, what Randy Fisher just said is real important I think.

At the subcommittee level you asked, Mr. Chairman, what's the next step. I would submit that the next step is, in our subcommittee, we take a look at the action plan and we come back with recommendations tied to, from strategic planning standpoint, finances.

You know, it's one thing having the missions, another one paying for it. And I think we need to come back to you all with recommendations specific to, you know, what is it that we see as a priority in the action

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plan, and as a recommendation, that we look for funding to go and cover the bill. So that would be my recommendation.

CHAIR BILLY: Okay. Yes, Bill?

MR. DEWEY: So I'm just trying to understand structurally how what we've set up is going to work. We haven't done something like this, at least in my recent experience, with an outside working group that's been invited to advise us.

So is this working group then charged with specifically coming forward with recommendations that the MAFAC Recreational Subcommittee is going to review and bring forward to the body?

And, I'm just trying to understand, functionally, how this is supposed to work.

CHAIR BILLY: Mark?

MR. HOLLIDAY: All right. So the working group is subservient to the Rec Fish Subcommittee. So their tasks and their

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activities are driven by what the subcommittee feels they should be working on.

And the entire purpose was to get a broader perspective, a wider range of views, experiences, and expertise, than we had on the MAFAC committee itself.

So they're serving the purposes and the goals and objectives of the subcommittee, which is serving the goals and purposes of MAFAC.

So they're not an independent body. They really are responding to charges and direction from MAFAC to the subcommittee to the Rec Fish Working Group.

So part of the outcome from this meeting, and what we talked about in the annotated agenda, was what are the particular tasks, assignments, issues that we want the Rec Fish Working Group to follow up on?

So they've given their view of the action plan, what they thought was strengths and weaknesses and areas that they felt MAFAC,

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the subcommittee, and thus MAFAC could advise up the line to NMFS and to NOAA.

But when it comes to implementation of the action plan, here's another group of people that said who are you going to ask about prioritization, get back improving the communication to actually take some of those recommendations, and work on developing some of the next level down of strategies, of timelines, of how to accomplish some of these things.

So it's an extension of the subcommittee. They work and report to Ken as the chair of the subcommittee. Ken, as the chair of the subcommittee, reports back to the full committee.

So it's a tool, an additional set of resources that could extend MAFAC's capabilities in the area of recreational fishing.

So that's how it was designed. They're not independent, they're not off on

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their own. They're reporting to -- and part of the structure and part of the tasking of what they do next should be coming out of the subcommittee when they meet in subcommittee this afternoon.

And Ken's recommendation and report out to the full committee would hopefully contain some additional guidance and direction on how we could best use the Rec Fish Working Group.

Bill, does that help clarify some of what -- other FACA committees that we have, the marine protected areas and the science advisory board, these other NOAA boards, these working groups, in a similar vein to bringing more specialists, more expertise on a particular area and serve as an additional set of resources. And this is the same analogous technique that we're trying to use for MAFAC.

CHAIR BILLY: Okay. Eric?

MR. SCHWAAB: So, I just want to add that there will be, based upon that

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initial working group input as well as whatever comes out of this meeting from the subcommittee, a next draft of this action plan that will presumably reflect, you know, some of the desire for more specificity around some of the key actions.

And so that there will be sort of a continued, then, check-back through this, the subcommittee, through this committee, through the Recreational Subcommittee, and the working group, as we not only finalize the action plan but implement it over time.

CHAIR BILLY: Okay. That's pretty clear. Any other questions about this aspect?

MS. McCARTY: I have a comment.

CHAIR BILLY: Yes. Heather?

MS. McCARTY: Regarding the Subcommittee on Strategic Planning and Budget Program Management that we're going to do tomorrow morning, it would be helpful to have really clear recommendations from the Recreational Subcommittee to that subcommittee

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so we can work together in terms of the budget issues that Randy was talking about.

CHAIR BILLY: Good. Okay? Yes.

MS. DANA: Just one last comment.

I don't know if the full committee had the opportunity to look at the list of the working group, but it's an impressive list from throughout our nation. And, you know, so we should feel well served by their willingness to advise us.

And I think there's a copy of that list in the materials here.

CHAIR BILLY: There is.

MR. HOLLIDAY: Right. There are links to the materials that the Rec Fish Working Group used at their conference call. And there are also links back to the summit report in terms of reference for the working group itself.

So there's a lot of materials out there if you'd like to dig a little deeper into the structure and the process that we've

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set up. The intent is for the working group to work sort of in between the MAFAC meeting.

So between now and October, as a result of this meeting, we made a commitment to get back to the working group, report out on what MAFAC recommended to NMFS and NOAA, as well as assignments.

If we want them to research or do some, you know, further thinking and deliberating about particular aspects of the action plan or anything else of interest to the subcommittee, to the full committee, between now and October meeting, we would empanel them again, we'd meet by conference call.

We have, maybe, a set of recommendations that we need from them or do some research or do some actions, bring that back to the October meeting.

And so it's scheduled to kind of work between the full meetings of MAFAC as an activity group that can keep the momentum

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going between the full meetings of MAFAC.

CHAIR BILLY: Tony?

MR. CHATWIN: So, in the, would you say, the process of trying to understand how this relationship works, I looked at one of the objectives that came out of the, in the action plan, the draft action plan, where it talks about ensure appropriate balance, stakeholder representation, and arranging a decision-making process and reviewing the 2010 Fishery Management Council nomination packet, with regard to intersect balance.

I'm just trying to understand whether the working, the subcommittee would make recommendations on, to the MAFAC, on the nomination packages, and then that that would lead to a recommendation from MAFAC on the nomination package. Because that doesn't seem like it.

MS. McCARTY: Not specifically.

MR. CHATWIN: But that's part of the action plan, so I'm just trying to

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understand how --

MR. FRANKE: The action plan -- during the meetings, the recommendation was that there would be improved representation. I didn't hear anywhere, in any of the summit or in the dialogue afterwards, anything about participating in the actual selection process.

CHAIR BILLY: I assume there's other ways that one could facilitate making sure additional qualified people are considered by the governors, or whoever, as part of that process. Yes?

MR. SCHWAAB: So when I spoke about there sort of being a two-track approach to our movement forward, this is one example. So the council process is done for 2010.

The input that came related to this issue from the summit, and follow-up from the participants, obviously factored into the decision-making process that occurred within NOAA and up through the department, related to those council appointments.

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I mean, it's a factor that we always consider. But I think there was increased attention based on the summit input and prioritization of that topic, which I think was at least reflected in some of those decisions.

But you do not want, necessarily, this group to be -- unless you want to grind to a complete halt --

(Laughter.)

CHAIR BILLY: Not on my watch.

MR. SCHWAAB: -- to be involved in the council process.

CHAIR BILLY: I know enough to know. Yes, Mark?

MR. HOLLIDAY: If I could just elaborate on that a little bit, the summit recommendations, just, not limited just to council appointments, but it was broader representation of the recreational perspective on many committees.

So it would include this idea of

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looking for strong candidates to represent the recreational stakeholders and the recreational sector on council appointments, but to council committees, advisory committee, SSCs, getting strong candidates to apply for opportunities to serve on MAFAC.

So it was a notion of getting the proper balance and perspective of recreational constituents' interest throughout the federal sector where there are policy and decision makings to ensure that we have good candidates, that those opportunities are widely known, and to use this network of people to help generate that, rather than offer an opinion on a specific person's nomination to any one of those committees.

So it was this broad opportunity to try to promote and generate highly qualified candidates to ensure a broader representation on as many of these decision-making bodies as possible.

MR. CHATWIN: If I may, just, I

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think it's helpful for me to understand. This document, this plan, was that the outcome of the summit, that it was submitted as a recommendation to NOAA? What --

MR. HOLLIDAY: The findings and recommendations from the summit were collated and synthesized into an action plan generated by NOAA staff as an outcome of the discussions held at the summit.

So one of the major discussion points was improved representation of recreational interests in the decision-making bodies. And that was translated into one of the action items of improving that.

And that action plan is an agenda for NOAA Fisheries to take follow-up and implementation steps to make happen.

So once we finalize that, we get further feedback from the full committee at this meeting, and fulfill these other vetting of the action plan, it'll become a document that provides the strategy, provides both

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short-term, you know, the next zero to six months, and longer-term perspectives of how we're going to follow up on these recommendations from the summit.

MR. CHATWIN: And the reason I raise this is I think that in fisheries there are a wide range of interests. And I think this is a, it's healthy to have the right representation of that range of interests.

And I just wouldn't want us to be singling out one specific interest group and promoting them above all others.

I mean, we've heard about aquaculture. You could imagine that there would want to be, if there is this tie to aquaculture and wild stock fisheries that we heard earlier, you might want to have that same consideration for that skill to be represented in decision making. With the environmental community, same issues.

So I just think we need to be cautious of this sort of -- while I see the

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value of it, I think MAFAC, as a body, has to be cautious of not being perceived as favoring one over the other.

CHAIR BILLY: Dave?

MR. WALLACE: Well, you know, Tony brings up the very interesting point that somebody's going to bring it up sooner or later, and so I might as well bring it up now, and I guess, Eric, I think that we should have a commercial fishing task force, too.

Of course, that's crossed your mind and you knew that you'd have to deal with that sooner or later, simply because, you know, I was part of the committee, and our recommendations for selection on the recreational task force.

And we saw concentrated efforts from certain recreational fishing groups who were very anti-commercial fishing, pushed really hard to try to stack the deck.

And, you know, I think that that wasn't done particularly, but surely there

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were some pretty strong anti-commercial fishing groups on that committee, or who are on that committee.

And, you know, recreational fishing is a recreation. Commercial fishing feeds a country. So we need to keep that in perspective.

And I think that the commercial fishing interest on this group, in this group, recognize that sooner or later, you know, if you, or, if the recreational fishing community is going to have a very strong voice, then the commercial fishing industry needs to have an equally strong voice.

CHAIR BILLY: Thank you.

MR. EBISUI: Okay. I'll bite.

(Laughter.)

CHAIR BILLY: All right, Ed.

MR. EBISUI: I just want to respond to Mr. Wallace. You know, one of the lines that we use in the Pacific is that as recreational fisherman, we don't play with our

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food.

So, as recreational fisherman, you know, many of us feel that we are providing food. That's the primary objective. Secondary is the enjoyment aspect. So anyway, that's what I have to say.

And Eric, you know, with respect to the representation on various bodies, be it council or whatever, as you know, the secretary has, or can play, a major role in that process, granted the nominees have filtered by, you know, the three per seat that the governor nominates.

But I think, you know, the secretary does have the opportunity, need to say, hey, wait a minute, these three are not qualified. Submit another list or do something.

And I'm pointing to, or I'm thinking about the most recent list that I understand either went for it or is going for it. I think it went for it already from our

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state. And when I saw that list, I had serious concerns about qualifications of any of those three.

And I think the, I would hope the secretary would look long and hard before selecting from that list or requesting another list. Our governor's going to change come November. Thanks.

CHAIR BILLY: Martin?

MR. MARTIN FISHER: Thank you, Mr. Chairman. I think at some point, we have to have a discussion, as painful as it may be about the economic philosophy that just because one sector or another's economic contribution to gross national product is higher than the other, that it gives it more value.

There seems to be a growing thing among some recreational interests that are anti-commercial, that they want to justify more allocation towards the recreational side because their value to the country is worth

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more on a dollars and cents basis.

And I think at some point, we have to decide if that's really the justification for reallocation. And that it would be very helpful at this committee level to have a conversation about that.

CHAIR BILLY: All right. Perhaps this evening in the bar.

(Laughter.)

Is there -- who else? There was --
- oh, Randy.

MR. CATES: This discussion reminds me of the MAFAC meeting in Saint Pete we had several years ago, where we got on the same subject of commercial fishing, rec fishing, the value of each, interests. And it would be interesting to go back and look at some of the minutes from that meeting.

But from my perspective, both --
it's just like the ocean we work and play in.
Everything's in balance. And sometimes things get off balance. And right now, with

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the seafood industry and the rec fishing and the ocean resource, things are not in balance.

And yet one sector targeting the other sector or preventing it from expanding or fulfilling its role, and that's where things are getting off.

Aquaculture is a great example. There have been in the past, the commercial sector has opposed aquaculture.

The seafood experience today is closely becoming where if you go out and you catch your fish, it's for recreation. When you buy a seafood dinner, it's imported. And that's sad.

So I would say that the commercial fishing, from being involved in both sectors, that commercial fishing should have more votes, so to speak, because it reaches out to more constituents in the American public. They feed more members of our community.

The recreational fishing, while very important, I don't want to see it where

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only the wealthy that can afford to go on a boat get the benefit of our ocean resources.

And there is a balance there. And it's a tough subject for this committee to think about, but that's, as we go forward and look at these issues, we've got to remember that. Everything's in balance.

Commercial fishermen probably reaches out and touches thousands of American citizens. Recreational fishermen reaches out and may touch several, family. But both have equal value and equal benefits.

CHAIR BILLY: Yes, one of the things that I appreciate about this committee is the, what I believe is the honest attempt by NOAA Fisheries to ensure that there's appropriate representation of the different interests.

And it's obvious to me that we have pretty good representation. I don't think there's perfect representation, but it's pretty good.

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And as a committee, with the role that we play, one of things I like is the fact that, and I learned over the years in the various capacities I served, importance of having what I always characterized as a healthy tension.

And what I mean by that is these different interests sitting at the table and it's there, sometimes it's spoken about, sometimes it's not. But in any of the policy making or other things you engage in, to make sure that people have an opportunity to have their input.

We all know, you know, we talk about subjects that some may have little interest in, it's not really germane to what they do on a daily basis, but they bring an important perspective to the whole process.

And so I don't think we can solve the question that some suggested a little while ago that, you know, it ought to be this way or it ought to be that way.

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But what we can do is continue the kind of process we have, so that we make sure that all sides, all interests, are heard and they're factored into the recommendations that we make and the other things that we do as a committee.

That's just my two cents worth. I think -- I work hard in this role to try to keep that balance. And when I hear that there's another, or I think there's another part of this that's not getting up on the table, then I try to make that happen, so that we have that kind of balance.

So I don't know if you want to add anything to that?

MS. McCARTY: I want to say something.

MR. HOLLIDAY: You want to say something first?

MS. McCARTY: Sure, but it doesn't have to be first.

MR. HOLLIDAY: Go ahead.

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MS. McCARTY: I think what we're seeing is this healthy tension, as you say, between recreational and commercial.

And I do know from my conversations with commercial folks in this state that there was a lot of anxiety generated by the increased politically-based focus on recreational fisheries.

And I say politically-based not because it's a bad thing, but because I think it is political and I think it's real. And I think -- I've seen it with my own eyes that there's a concerted effort by this administration to engage with the recreational community. And I think that's a good thing.

But I do know that it's engendered this healthy tension, or maybe not so healthy, because the commercial folks are saying why can't we have that, why can't we have that face time with Dr. Lubchenco, and get that same reassurance from the administration that commercial fisheries are just as important to

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this country as recreational fisheries are.

And so if I was to give any advice as a MAFAC member to Fisheries Service, I would say don't exacerbate that divisiveness between the recreational and commercial communities.

And I think what Vince said earlier really rings true to me. If we are truly partners, on both sides of that divide, towards a better resource, then I think that reassures everyone, particularly commercial fishermen.

If we're just fighting over a dwindling resource and we're talking allocation, allocation, allocation, representation, which gives you more power, which gives you theoretically more allocation, that's a no-win situation. And it's going to divide folks, not just on this committee but in the country.

And I think you have to be really careful of that because I see that we're

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pushing up against that problem. My two cents.

CHAIR BILLY: Paul?

MR. CLAMPITT: Well, I'm listening to this and it seems like the main problem between commercial and recreational is of course allocation.

And, you know, catch shares are the big thing that everybody's pushing for now, or NOAA's pushing for. And it seems to me that they're not really -- you know, when they're making these, you know, permanent allocations, not all the parties are brought to the table at the time.

You know, we just had a bloody legal battle in the halibut fishery in the Southeast and that's still going on. And mainly it's because when catch shares for halibut were divvied out, recreation wasn't even on the horizon at the time. I mean, who would have ever thought that anybody would want to go out and catch a halibut

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recreationally.

And now I see the same thing going on with black cod. They're going out and catching black cod in Chatham Strait at 2,000 meters, or 2,000 feet.

MR. MARTIN FISHER: Where'd you hear that?

(Laughter.)

MR. CLAMPITT: So, I mean --

CHAIR BILLY: With electric reels.

MR. CLAMPITT: So if I was going to give NMFS advice on that I'd say, you know, they've got to do a better job in catch shares to bringing the recreational people into the table. Otherwise, you're just going to have these allocation battles.

And there's got to be some mechanism to -- if recreation is growing, you know, I've got no problem with that. But, you know, you have people who make big investments in the commercial side of it.

And there's got to be some

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mechanism if the recreation wants to grow, to either get a grant to buy it from the commercial guys or be able to buy it from them.

And that's, to me, the only way to solve that allocation issue. Instead of just, oh, well, we're just going to take that now.

CHAIR BILLY: Okay. I know there's some people behind me that also have a keen interest in this area. Is there anyone from the public that would be interested in making any comments on this? We welcome the input. Yes?

MR. GEMMELL: I'll make one comment here. I've -- Tom Gemmell, here. I've worn multiple hats up here.

But on the economic part of it, we just went through a big thing last year, a sport fish study funded by the state and the feds. The industry funded a study. Different methods came out. The numbers were never meant to be reconciled.

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So if you go down this path of economic stuff, and if that's, that is one of the criteria, not the only criteria. But we need to kind of do them in parallel so they make sense if you want to try to compare them, because that's not happening now and it gets people fired up.

As far as bringing people to the table, been going on since 1994. Both sides have been there. It's been bloody. Council's made decisions and they're upended by NOAA.

A public process, but when a political part gets in there it undoes a lot of work by the council from the people within.

CHAIR BILLY: Thanks. We'll go Martin and then Ed.

MR. MARTIN FISHER: Thank you, Mr. Chairman. I think one of the greatest challenges we face in regards to this issue is the issue of accountability. How in the world can we divvy up the fish if we don't know how many we're taking out of the sea.

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And, unfortunately, there is a disparity difference between how we count fish at the commercial level and how we count fish at the recreational level. And that's nobody fault, it's just the way the system is at the present time.

But the thing that I keep hearing in my part of the world is we want more allocation, but we're not willing to do what we need to do to count the fish.

And I know, MRFSS has come online, and, but we don't have real time, right now, data collection that gives us a full representation, at least in the Gulf, of what the recreational community is catching.

Certainly at the charter boat level, that's not true. There's charter boat surveys, there's charter boat log books.

But the personal angler that's going out to sea to catch his one black or gag to take home and eat with his family and his neighbors. Those folks don't have a system

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that they can plug into, to be able to count those fish.

And as I see it, part of the mind set that creates this bubble of whatever that it is, it doesn't make any sense. Because if I'm a recreational angler, I go out and I catch my four fish, but I'm not thinking about the other million or other two million guys that go and do the same thing.

And good or bad, until we can really count those fish, and plug that into our stock assessment and remake the stock for the world -- because everybody that's on the water knows that the stock assessments are a far cry from what we're seeing down below.

And that's not to knock NOAA in any way whatsoever. But the process itself is deficient because we can't get the data.

CHAIR BILLY: Ed?

MR. EBISUI: Thank you. I just wanted to say that -- and I really appreciate the members, the membership here, and the

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committee because, you know, this tension that was spoken about, I think there's respect.

We can disagree, we have our own different points of view, but there is respect for the other person's point of view here. And I think that's very constructive.

As far as the tension between the recreational and commercial sector, I think there -- you know, until we can get to that point where we've fully implemented sustainable and responsible fishing, whether commercial or recreational or together, those sectors are going to either sink or swim together. So we really ought to be working together, rather than against each other.

CHAIR BILLY: Okay. I'm going to wrap this up, but Randy and then Ken.

MR. CATES: I think it's a healthy discussion. I think a lot of the tension is politically created. So I'm wondering whether MAFAC would give advice to the administration.

I mean, in my involvement in

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commercial fisheries, I have never seen this high a level of distrust with this administration with fisheries. I've never seen it this bad.

On one hand, you have the, it appears, the administration reaching out to recreational. And then on the other hand, all you read about in any seafood trade magazine is the target against commercial fisheries.

So I think there is a level of respect, but it's, the tension is growing. And I think MAFAC could play a role in advising the administration on how better to handle it.

CHAIR BILLY: Ken?

MR. FRANKE: What Ed said just now kind of sunk home with me. I was taking a look at the goals from the actual summit. If you take out the word recreation in all of the goals that are listed, improve an accurate precision in timeliness of fishing catch effort, having regular and better

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communication with fishermen.

Pretty much everything that was in the product of the summit is good for commercial and recreational fishermen. Just take out their unique titles and just say fishermen, and all of the sudden it became, like Ed said it, it's one battle, it's one mission to work on. So I think we can maybe use this as a common path to follow.

CHAIR BILLY: Eric, the final word?

MS. FOY: Oh, no, let me have it.

(Laughter.)

CHAIR BILLY: Oh, you want to? I'm sorry. You had your hand up earlier, I apologize.

MR. EBISUI: Okay, princess.

(Laughter.)

MS. FOY: I'm going to put on the Dorothy Lowman hat for a minute. I really miss Dorothy on this committee.

And I believe Dorothy would take

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the opportunity to stress that when we're talking about all the different allocations here, we're talking about fishermen. We're all, really, the same user group. We're interested in fish.

But we're not the only competitors here, at the larger coastal community table. We're going to have energy, obviously, and they're competing. And we've got, as we're talking about resources, we better start talking about the environmental community that want to partition off our resources. We're going to lose our coastal communities as a result, and the working waterfronts.

We need to take maybe -- I know that Ken is suggesting one step back, looking at rec fish and commercial together. I think we take another step back. We look at aquaculture and we just become seafood producers and users.

And take another step back and it's, you know, take a look and recognize that

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there's other people that are interested in our ocean's resources. And they're not around this table and recognized. But they are going to be part of driving the allocation of our nation's resources. Thank you.

CHAIR BILLY: Thanks.

MS. FOY: The princess is done.

(Laughter.)

CHAIR BILLY: They weren't my words. Eric?

MR. SCHWAAB: Thanks, Mr. Chairman, and thank you all. I think that was a great discussion. I mean, points made, Heather, Cathy, others, very well taken.

I mean, but, I sort of wanted to circle all the way back to Tony and Dave's point regarding representation.

And I think, at least the working premise in the focus on the recreational community was not to elevate them above some of these other interests, but was that they felt they were, you know, rightly or wrongly,

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were so far below some of the other interests in representation that what we needed to do was provide some focus to sort of elevate them on an equal plane.

Now, you know, that's a delicate balance. You know, beauty is in the eye of the beholder. You know, where we are, sort of in that, you know, on that scale is something for any individual to judge for his or herself.

But I certainly recognize, as does Dr. Lubchenco, sort of inherently, that that's a delicate balance that we have to undertake.

I think the other point that I wanted to make was really I think, Paul, encapsulated by the two examples that you used, and it's the way that we might use this focused engagement with the recreational community where it is appropriate versus where it is not appropriate.

And in the case of catch shares, we heard very clearly from the recreational

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community that they felt like there was a need in the development of the catch share policy to, you know -- it was silent on the way that the recreational community may or may not engage in catch share systems.

And I think it was to everybody's benefit -- and Mark will talk about this catch share policy.

But one of the things that we focused on coming out of, you know, the summit was, well, can we make sure that we have the catch share policy cast in a way that sort of effectively creates a playing field that helps everybody understand how the recreational community may or may not participate.

And we'll see that, I think, in that final policy, not to the detriment of any other user group, but in a way that sort of creates that appropriate framework.

On the other hand, we heard a lot about allocation. And one of the things that I heard from, you know, the recreational

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working group was, you know, we want to help you formulate an allocation policy.

And my answer was absolutely not.

There is no way you can have an allocation policy that originated in an engagement with the recreational community that would have any validity.

So to me, Paul, the two examples that you used sort of, I think, demonstrate very clearly where it is appropriate for us to engage specifically with the recreational community, and where it would be completely inappropriate for us to engage specifically with the recreational community to, you know, the detriment or exclusion of some others.

And I just wanted to sort of use those examples to, I think, sort of help the committee to understand where our thinking is in relation to that.

But, first and foremost, want you all to understand that we get, that I get, sort of that tension and that we're respectful

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of that tension. And we're certainly respectful of the diversity of interests that want to be sort of on the same plane in their ability to communicate with us. Thank you.

CHAIR BILLY: Let's break for about 15 minutes. Thank you.

(Whereupon, the foregoing matter went off the record at 10:33 a.m. and resumed at 10:52 a.m.)

CHAIR BILLY: Okay, I'd like to get started. Okay, now we're going to focus on the, I guess what is properly characterized as the broader picture in terms of protected resources, and the important role that NOAA Fisheries plays in this area.

And fortunately we have Jim Lecky with us and he's going to provide us some perspective. And then we can have further discussion to set the stage for the subcommittee to consider in its work later on. So, Jim, floor is yours.

MR. LECKY: Thank you, Mr.

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Chairman. So at the last MAFAC meeting there was some discussion about some of the ESA issues, and unfortunately I wasn't there to participate.

So I'm excited that MAFAC is interested in these issues and happy to be here.

The issues that kind of came up were how do we set priorities under Endangered Species Act, little bit about listing and delisting, discussion on climate change, and then something on observer issues.

So I'm going to touch on each of those issues as I go through this presentation.

But I thought I would start first with a sort of overview of our structure and a couple of high level comments about both Endangered Species Act and the Marine Mammal Protection Act.

And I guess, just to follow up on yesterday's discussion and the change of MMS

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to another agency name, I noticed this morning in an e-mail somebody sent me that -- and I don't really like to promote other NGOs or NGOs in general, but the Public Employees for Environmental Resources is auctioning off MMS memorabilia.

(Laughter.)

So it will be a collector's item and you'd better take advantage.

So here's the structure of my office. I've got four divisions in my office.

Three of them are program related, one's permits that does research permits mostly under the Marine Mammal Protection Act and also Section 10 of the Endangered Species Act, although some of that is dedicated to the field.

One that's mostly focused on marine mammal and sea turtle conservation, i.e., dealing with commercial fisheries and specific activities that affect some species, like we have a program that's focused pretty

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heavily on North Atlantic right whales and shipping, for example.

Then my endangered species division is where we do most of our endangered species work in the headquarters' office.

Our role in headquarters is largely oversight, coordination on national issues, refereeing disputes between regions when they're approaching decisions that might be contrary to one another, and things of that nature.

There are also a number of programs that are just sort of national in nature that we'll talk about briefly as we go through this, that are run out of my office in those divisions.

And then my fourth division, Planning and Program Coordination, is basically the group of folks that keeps the bus running and budgeting kind of things.

So each of the regional offices also has a Protected Resources Program that's

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overseen by an assistant regional administrator.

Those people work closely with my office and we talk regularly about issues. But they, in fact, report to the regional administrators and not up through me. So our role there is really coordination.

And one of the things I've done in my tenure here is to work pretty hard on trying to delegate stuff out to the field, because I do believe that's where the action is and the field needs to be empowered to do stuff.

So just a couple high-level comments. You know, ESA provides a program for conservation of threatened and endangered species. These are the other missions of NOAA besides fisheries management.

And it's ecosystem based. Our goal is to provide a means to conserve the ecosystem that these species depend on so that there's space and resources for them to grow

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and recover.

The tools that we have available under the ESA are, of course, the listing process is what brings the ESA to bear.

Enforcement, the take on prohibition, that actually is implemented by our Office of Law Enforcement.

I think it's a lousy conservation tool, it's retrospective, the damage is already done. But it's an incentive to avoid being prosecuted, so we take advantage of enforcement where we can by making key cases and publicizing those important cases that are brought to bear.

Where we get most of the bang for our buck is in the inter-agency consultation process. The federal government does a lot, and has done a lot historically, to affect resources and habitats.

Inter-agency consultation process requires every federal agency to ensure -- I want to emphasize the word ensure because

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that's where the conservative approach that we take under the ESA comes from.

We want to make sure that when we're looking at a federal action and asking the question, is it likely to jeopardize a continued existence of a species, that we're confident in our answer when we say, no, it's not. And so we do take a very risk-averse approach in looking at information.

And the outcome of an inter-agency consultation is a biological opinion. I emphasize it's an opinion. It's not a science document, it's an opinion.

It's hopefully, and we think usually, based on sound science. And we're, have in the past, and often willing to submit the science used in those opinions to peer reviews, so that everybody's confident that we're using the best available information and that we're using it in the right way.

But at the end of the day, the secretary has to issue an opinion. And in an

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endangered species world, we're often confronted with incomplete and uncertain information. So we render the best opinion that we can in that regard.

There are other exemptions available in the statute.

Well, I should say the other thing that comes with a biological opinion is an incidental take statement. That incidental take statement exempts that federal action from the prohibitions of take in Section 9. So that's an incentive to engage in the process and to have a positive outcome.

Not every action is a federal action, though, so there are other exemptions available under the statute. Section 10 offers an incidental take permit to private landowners, for example.

We have a few Section 10 permits with some states for state-managed fisheries that take sea turtles. In the Southeast there are a couple of those. I think we have one

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with Georgia, for example.

And then for threatened, well, actually for all species, we have the ability to write regulations to control specific activities. So one of the early regulations we wrote was approach distances for humpback whales in Hawaii.

We most recently published regulations on ship speeds to try and control shipping traffic into East Coast ports to minimize the mortality of North Atlantic right whales.

And we've published regulations to implement programs in various fisheries, as well. Gear requirements, TEDs, for example, turtle excluder devices, things of that nature.

And finally, recovery plans and take reduction plans are sort of -- well, actually, take reduction plans belongs under MMPA.

So recovery plans are a tool that

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identifies the limiting factors, talks about how to address those limiting factors, and identifies agencies that could contribute, or should contribute, to addressing those limiting factors.

It's a road map, it's a recommendation, it's not a regulatory document.

So, Randy, that slide's for you.

Marine Mammal Protection Act is specific to this class of animals. Marine mammals should be encouraged to develop to greatest extent feasible.

So our goal is optimum sustainable populations for marine mammals. That's been defined as a range of populations between maximum net carrying capacity and, excuse me, maximum net productivity and carrying capacity.

And again, it's an ecosystem-based statute. And we have had some success stories under the MMPA. And they're not always real

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popular successes, but nevertheless, I contend that California sea lions are functioning elements of their ecosystem.

(Laughter.)

Too bad Bob Fletcher's not here.

So tools available to us under the MMPA are basically similar. There's a broad moratorium on the take of marine mammals that's put in place by that statute.

And there are a system of exemptions to allow activities to go forward that might interact with marine mammals in a way that they can be modified or regulated to ensure those effects are not overly burdensome or adverse to the population.

There are trade restrictions. The tuna-dolphin program is regulated under the Marine Mammal Protection Act in a special charter. It's not nearly as important to the U.S. economy as it used to be, but when I got involved in this business it was a big thing.

We do have a process for

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determining and regulating marine mammal takes in commercial fisheries.

It's based on potential biological removals, which is a calculation of minimum population level, what we know about reproductive growth rate for the population, and conservative safety factor depending on the status of the stock.

We pretty much allow all of that to be, all of the PBR to be taken if the stock is healthy and there's not significant interactions.

But with stocks where we're uncertain, we reserve half of it to population growth and recovery.

And for threatened, endangered, or depleted stocks, we reserve 90 percent of the potential biological production to population growth and recovery.

And for fisheries that have a significant impact on marine mammals that were -- a particular fishery takes a significant

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portion of the potential biological removal, we're required to convene a take reduction team, which is a balanced team including NGOs, fishermen, gear technologists, our scientists and our managers, along with state agencies to develop strategies to reduce the take below PBR, and ultimately to achieve a zero mortality rate goal.

So those are challenges. Some of them have been -- I think we have six in place and we're adding a couple more.

Hawaii is our most recent venture, looking at false killer whales and their take in longline fisheries in Hawaii.

Likewise, there are other permits and observations -- permits for scientific research are available.

And authorization for taking of small numbers of animals incidental to activities other than commercial fishing, is also available provided that those result in small numbers of animals taken, that the take

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is negligible to the population and that, at least in Alaska, that there also is a determination of no unmitigable adverse impact on availability of resources for subsistence use.

Finally, we do public display, and health and stranding response is something we've done under the statute since its inception.

But I think in '84 there were specific chapter or title passed on health stranding response that puts in place some funding mechanisms, a little more rigor in the program.

And it's actually that program that is working in the Gulf now to respond to turtles and mammals that we talked about yesterday.

So that's sort of an overview of what we do, and what the tools are that we have, and a little bit how we use them.

How do we prioritize our work? I

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know there was some discussion about prioritizing listing decisions.

I did produce a table of all of the listing actions that we have underway. There's about 34 of them and they're in various stages of the process.

Unfortunately, it didn't get sent out as background material, but we got it out just a bit ago, so you'll have that to look at.

But we manage all of our -- we consider sort of priorities not just on specific actions under the Act, but sort of all of the things that we have to do under these statutes and how to manage them best.

We do have to deal with mandates.

Some of these provisions have specific timelines associated with them, and if you miss a timeline you get a lawsuit. And so we really can't prioritize all of the work that we want to do.

We also have, inter-agency

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consultations are mandatory. Agencies have to do them, therefore, we feel we have to be responsive. And they also have timelines associated with them, although in some circumstances those are a bit negotiable.

And then we get the courts. They often provide us with guidance on what work to do and on what schedule we should get it done.

So those limit our ability to prioritize things. But what we do do to prioritize our work load is spread it around.

So I mentioned delegation to the regions. Inter-agency consultations have been delegated to the regions.

The regional administrators have the lead for completing consultations and issuing biological opinions for actions on federal -- for interactions with federal agencies on actions in their regions.

In some circumstances, a particular region may take the lead on an action that covers one or more regions. And

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we usually pick up the ones in headquarters that are national in scope.

And again, we, for really complicated or controversial ones, we also can weigh in if we think there are going to be precedents set, for example, things of that nature.

So delegation is one way of dealing with our priorities.

And the things that we tend to consider in deciding which work gets done first are the availability of resources, what staff and what money do you have to throw at a particular project, what is the risk of that action going forward for the species, what are the conservation values that could be achieved by addressing that particular activity.

We tend to pick the ones that are the highest risk or have the greatest conservation benefit to work on first.

Scope of the project, is it going to affect the whole range of a species or is

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it just off in one little corner some place and we could really sort of let it slide.

And acceptability of delay.

So consultations for example, are inter-agency. Some of them don't really have a permit applicant that's chomping for a permit, or that we can continue to do consultation while actions go forward. And we can negotiate schedules that allow us to go forward.

And even some of the listing decisions where they're really complex, we can sit down with the petitioner or the plaintiff, if there's a lawsuit over a deadline, and come up with a workable schedule to sort of spread the work out.

So that's basically how we deal with priorities. We don't have a formal published process, like Fish and Wildlife has, for listing decisions, but I would note they've changed it about five times in the last six or seven years, so it's not really a

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formal process there either.

Some of the hot topics that we're working on, just as a way to sort of show you how we're doing priorities are ocean noise.

So sound is a really important component of the ocean. Almost all of the animals out there use it in some form to communicate, detect threats, avoid threats.

And we're capable of producing sounds that interfere with that communication.

And we're also capable of producing sounds that can cause injury or death or mortality to marine species.

So we're working real hard -- one of our customers, one of our biggest customers, of course, is the Navy. They train with sonars. They train a lot. They train all over the world, mostly on both of our coasts.

It's important training. It keeps the battle groups battle-ready, keeps the sailors safe. I think it's important to do

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that, but we want them to do it in a way that protects as many marine mammals as we can.

So related to that, we also have a really robust research program that's funded by the Navy to look at where animals are that are sensitive to sonar, and understand a little bit more about their dynamics and how that interaction occurs.

Ocean energy is a big one. We talked a little bit about oil yesterday. That's something that we work on with MMS, or Bureau of Ocean Energy and Management.

And we have lots going on up here in that regard as well. We were, before Interior pulled the permit applications, considering permits to do exploratory drilling up here, and their impact on the bowhead whales and ice seals.

There's also a lot of interest in alternate forms of energy in the ocean. And I would note that alternate energy is not necessarily green energy.

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So when you want to look at the effects windmills on land chop up a lot of birds and bats. Windmills in the ocean have the same potential to do that to fish.

So we want to make sure that they're in areas that are safe or that they're constructed in a way that considers migratory paths and things of that nature.

They also can be noisy in their own right and we want to consider that. And they have the capability to entangle and harm marine mammals and other protected resources as well. So those things go into the mix.

Hot spots for alternate energy are sort of popping up all around the place. Cook Inlet, there's some projects under consideration. Puget Sound, there's some projects. North coast of California, Olympic Peninsula.

There's already, the wind farm that just got permitted and is already in litigation off of Martha's Vineyard. So

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pretty much everywhere we're dealing with that issue.

Pesticides.EPA registers pesticides under the Federal Fungicide, Insecticide, and Rodenticide Act.

They've been doing that for a long time. They've got over 900 registered chemicals. They've not consulted on any of them. And the courts have recently told them that they need to do those consultations.

These consultations are on registration of chemicals that are authorized for use nationally.

So when they register a chemical for use, they should be asking the question, what effect does this have on endangered species wherever it's going to be used. And they have never asked that question.

They've got a staff of 900 people. We've staffed up and have five now to deal with this workload.

Our big effort here is trying to

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figure out how to change their process to ask relevant endangered species questions, so that we can take advantage of their workload and we don't have to duplicate their resources in our organization.

So it's a huge challenge. It's underway. We've been working on it for about five years and it's going to be another several before we figure it out, but we're making progress.

Water, particularly Western water, is a big issue, but it has become an issue in the South recently.

Hydropower facilities -- so this happens to be Shasta Dam in northern California, water supply for 22 million people, water supply for two and a half million acres of irrigated land.

That white mountain way in the background, that's the historic spawning ground for salmon in the Sacramento River.

So there are huge challenges with

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managing water and maintaining salmon resources all throughout the West, all up and down California, Oregon, Washington, and in Idaho.

And as you might be aware, several of our biological opinions, particularly on the Central Valley Project and the Federal Columbia River Power Project, are in constant litigation and undergoing constant revision.

So huge workload, huge resources at stakes on all sides, including commercial fishery and recreational fisheries for those resources, tribal interests. They are really complex, complicated problems.

Every region has fisheries issues they're dealing with, mostly bycatch issues, but some competition issues. Of course up here, it's Steller sea lions and groundfish.

But salmon, swordfish on this coast. West Coast is swordfish and trawl fisheries -- or excuse me, East Coast and Gulf is mostly trawl fisheries.

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But we're working with those industries and trying to reduce those takes and make sure that the conservation measures have minimal impacts on the economics of the fisheries.

And then, finally, petition workload. I shared the workload slide with you. It sort of speaks for itself. I would suggest that -- well, I'm going to go through that next, so I'll save it.

We did just get a petition for bluefin tuna, just so you know, in the Gulf.

So that's sort of our priorities, what we're working on, and how we go about managing the workload.

So I can stop at one of these junctions or we can just go through and take questions at the end. Should I just keep going?

CHAIR BILLY: Keep going, I'd say.

MR. LECKY: Okay, I'm going. So ESA listing, delisting. Usually listing

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processes start with a petition from some interested party. They can start internally if we're aware of a resource that we think is in serious trouble and we ought to protect, we'll do one ourselves. But typically they come in petitions.

The statute lays out a time frame, 90 days, that we have to evaluate that petition and decide whether the action that's being proposed is worthy of investigation. We make a warranted finding in that case.

If we do make a warranted finding, we start a status review. That involves a peer review to look at the best available science.

It also includes a big information gathering effort. We try and get as much information as we can from academia, from state governments, from consultants, anybody that might know something about a particular species. We try and get the body of information we can. And then we pull that

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group of experts together.

We make a 12-month finding. If we find it's warranted, we'll propose it. There's a public comment period, and a review and final rule, and also we have to do critical habitat designation.

If it's a threatened species, we also usually do a rule to develop and convey conservation measures.

So that's just a broad overview of the process. I do want to make a couple points about the petition though, the petition process.

So the public, under the Administrative Procedures Act, has the ability to petition the government to pretty much consider anything.

And that's -- there's a tie between the petition process and the ESA and the Administrative Procedures Act, as sort of the standards that you look at in evaluating that petition.

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So it's a really low bar. We don't reject very many petitions, although we do reject some. We're trying to get, reject one on porbeagle right now, for example, and I think it's about ready to be approved. But generally, it's a low bar.

When we evaluate petitions, the only thing we're allowed to look at is information that's immediately accessible in our files. For some fish species that turns out to be a rather substantial amount of information. For others species it's not very much. And the information contained within the four corners of the petition itself.

And a lot of the environmental groups that are petitioning us right now are hiring staff that are pretty good at writing petitions. They seek out this information and they develop pretty thorough petitions. So it's getting pretty hard to reject petitions that come in.

And I mentioned a little bit about

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how we do this. So when we do get a petition and we do accept it for review -- these are a couple of species we're looking at.

We do have a petition in hand for 82 corals of species that we're evaluating. Mostly, it's, the basis of that petition is climate change.

One for bumphead parrotfish. The basis of that one also is climate change because they're dependent on corals, but also overfishing is part of that petition.

And then ice seals. So there's sort of a theme here. We're getting a lot of petitions related to climate change.

There's at least one organization out there that really wants the government to step up and do new legislation on climate change. And they're making as much noise and grief as they can for the public, through the ESA, as an incentive for Congress to do something.

I'm not sure the message is

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getting through, but it's making my life pretty busy.

So we look at well, where is the species mostly located. And we, if it's in a particular region, we tend to assign that region as the lead. They work very closely with their science centers in putting together the information.

We usually will bring together a panel of experts to conduct a risk assessment.

A risk assessment usually is some sort of evaluation of probability of extinction over time. So they look at that.

If there's good population information, they'll actually do a population viability analysis to get us some specific stats on that. If not, it's really sort of expert judgment on level of risk.

And once they figure it out, that the population is at risk of extinction, then they go in and they look at the five listing factors that are in the statute.

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So, see if I can remember those. Loss of habitat, overuse, disease and predation -- I'm not going to remember all five of them -- other factors, inadequate regulatory mechanisms.

Those are the five factors and you have to sort of tie the -- consideration of those five factors is really an explanation for why the species is at risk.

And identifying those factors feeds back into information later in developing recovery plans and doing consultations.

We also can consider conservation efforts that are under way. So one of the shortcomings of a population viability analysis is it tends to just be a statistical projection of a historical trend.

So if you've got a trend that's going down, you're going to project it going down. If you've got a new conservation effort that looks like it's really being productive,

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it's hard to get that figured into the math.

So there's a separate analysis of conservation efforts. PECE stands for Policy for Evaluating Conservation Efforts.

Got to have a track record, it's got to be funded, and it's got to be producing some results. It can't just be a, oh, we don't want to list this species, let's put a program together. We've done that lots of time and we lose every time, so we have to be a little more rigorous about it.

And then the BRT or the, excuse me, the biological review team will make a recommendation to the regional office and they will consider that and act on it.

So if their recommendation is to list, and the regional administrator and the agency agrees we want to do that, we make an if-warranted finding. So listing looks like it's warranted.

And from that point on, it's just your typical notice and comment rulemaking

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session. We go out with a proposed rule that lays out the findings in the status review.

Those findings are peer-reviewed.

It lays out some of the peer review comments.

And it lays out the rationale for whether it's threatened or endangered or, and how we want to maybe break it up into DPSs, if we want to do that, Distinct Population Segments, for example.

And there's usually a 60- or 90-day comment period that we employ. And then from there it goes to a final rule.

Delisting, comment on delisting. So there's three ways to get off of the endangered species. One, you can recover and be taken off. That's the preferable way.

Two, there can be actually new information. This has happened to Fish and Wildlife way more than us.

But they'll put something on the list and then they'll go out and invest a little bit of money in doing some research,

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and they'll find a whole bunch of them somewhere. And they'll go, oh, well these really aren't endangered. So they'll take it off the list.

MS. FOY: Jim, can you talk to me briefly about downlisting?

MR. LECKY: Yes.

MS. FOY: Does that come later?

MR. LECKY: It comes right after this next comment.

MS. FOY: Oh, good.

MR. LECKY: So extinction, and it of course is the third way off the list.

So delisting and downlisting basically are steps. So if something's endangered, you can downlist it to threatened and then if it's, or you can go straight to delisting. And if it's something's threatened, you can take it off the list.

I personally think going from threatened to endangered is a huge waste of time, but a lot of public want to do that.

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And the reason I think it's a huge waste of time is it doesn't really save of us anything in terms of the workload that we have to do to conserve the species. You still have to do Section 7 consultations, you still have to issue permits, you have to write a 4(d) Rule. All that stuff's in place regardless. So, but nevertheless we do that and probably will do that for some.

It's basically the same process. You start with a status review, you look at what's the current status of the species. We may or may not put together a biological review team. And we put together the argument for why the status ought to change. And then it goes into a notice and comment rulemaking process.

So it's basically the same process as listing, we're just asking the question, should it be taken off as opposed to, should it be put on.

And in that analysis you have to,

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you know, argue that the population's secure, explain why you think it's secure. And you have to address the five listing factors.

You know, is the habitat secure, are the adequate regulatory mechanisms that are going to be in place after listing adequate to continue to protect it. Those are the questions that you would ask in a delisting determination.

So we haven't done a whole lot of delisting. And we have examples of both ends of the list here.

We did delist gray whales many years ago. We're actually fighting pretty hard to keep them off the list. There's a lot of interest in adding them back onto the list, but we think the population is at or near carrying capacity and it's behaving like a population that's within that range. So we're pretty comfortable with keeping it off the list.

Bill?

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MR. DEWEY: Jim, is delisting typically an action taken by petition or is it just an action typically just taken by the agency?

MR. LECKY: Well, it's usually an action taken by the agency, but it can be initiated by petition as well.

So if someone, you know -- for example, I'm surprised oil companies haven't petitioned us to take sperm whales off the list. But they haven't, so.

And then of course, just a year or so ago, we delisted the Caribbean monk seal, which I think the last sighting of a live Caribbean monk seal was in 1952. Not sure if I was still in diapers then or not, but pretty close.

So, climate change. Let's move on to climate change. The big issue for us in climate change is, do we need to consult on greenhouse gas emissions? And we're trying to avoid having to go there. There are some

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folks, environmental groups, that would like us to do that.

So climate change and greenhouse gases, 250 years of emissions into the environment of a chemical that stays in the atmosphere for up to 1,000 years. It's a cumulative impact that we're experiencing today.

The contribution of even a really huge coal-fired power plant burning really nasty coal is insignificant if you analyze it on a power-plant-by-power-plant basis.

The action area is defined under Endangered Species Act as that area that's affected by the project.

For a climate change project, the action area is the whole earth because it's a global process. And therefore, every species that's listed has to be addressed in that consultation and biological opinion.

It would be a huge waste of time and redirection of resources for absolutely no

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benefit for protected species. We really, really don't want to go here and we've tried hard not to.

The Bush administration published a rule at the end of the administration that took this off the table. They made a mistake in adding a bunch of other stuff that people didn't like, and so the Obama administration pulled the rule.

Congress gave the Obama administration a short window of opportunity to pull that rule off the table if it wanted to without going through a notice and comment rulemaking process, they decided to do that. And they announced at the time that they were going to undertake their own review of ESA regulatory reform.

That's under way, it's going kind of slow. But they did tip their hat as Congress also gave them the ability to pull the polar bear rule off the table.

The polar bear rule says that

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they're only going to consult on actions that affect polar bears within the range of the polar bear, i.e., they're not going to do climate change consultations on power plants in Iowa.

So I think the Obama administration is more or less on record as saying they don't want to go here either, but they haven't actually been that specific. And that's something yet to come, I think.

They still are struggling with whether we want to do other regulatory changes under the ESA. I didn't mention that, but there are some things that absolutely need to be done, like developing a definition of critical habitat adverse modification.

And we'd also like to change the process for designating critical habitat and make it more streamlined.

So where we want to go with climate change is adaptation. We want to look at, primarily, in our inter-agency

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consultation processes, how are watersheds, areas, species ranges going to change over time, where is their flexibility in that environment to maintain habitat for endangered species given what we know about how that area is going to change, how adaptable are those species to being able to stay in those areas versus how can we accommodate, providing opportunities for them to move to areas where they can survive.

So this is where we think it's important to invest. And we're trying to look at -- and the courts have also weighed in on this and said we do need to be looking at climate change in our biological opinions.

And so in that context it really is looking at this question of adaptation, adaptability.

And we can also ask how should that project be modified given what we know about climate change.

So our challenges for adaptation

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are information on climate change and how it might reveal itself in a particular area is pretty sparse.

The tools that climate experts have available now are really good at projecting regional climate changes. So North America, the northern hemisphere, they're pretty good at saying how they think that might unfold.

They're getting better at saying something like, well, the western United States is going to get, or the Southwest is going to get drier, the Northwest might get wetter.

But looking specifically at an area like the Klamath Basin or American River watershed or something like that, it's pretty iffy. But we're getting better. We're getting better. But that's the kind of information we want to look at.

We're in the process now of sort of looking at some key biological opinions

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that we've been through, where the courts have weighed in and said, yes, that's a good analysis, or we've gotten good comments to provide sort of a best practices approach for our staff biologist to look at this.

But this is where we think the climate change issue and the ESA intersect, is at this level. So that's my climate speech.

Fisheries observers, we have authority under the Magnuson Act, MMPA. So all fisheries are identified, whether they're state or federal, on our list of fisheries from the Marine Mammal Protection Act.

And then they're categorized into three tiers: those that have frequent interactions with marine mammals, those that have occasional interactions, and those that only remotely or rarely interact with marine mammals.

That third tier we pretty much ignore under the MMPA. They don't have to register, they don't have to carry observers.

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Tier 1 and Tier 2 fisheries do have to register under the MMPA. Most of those registrations are linked to some sort of fishery registration or federal permits. I don't think we issue a separate registration anymore, or rarely.

Those fisheries have to carry an observer if we ask. Our priority for placing observers is in the Tier 1 fisheries. But where we have resources or a particular interest, we can put observers on Tier 2 fisheries.

And we have used the Endangered Species Act to put rules in place to try and mimic that process for turtles, particularly on the East Coast.

So we are trying to identify and get resources so that we can place observers on vessels that don't necessarily carry observers for marine mammal purposes, but we want to look at for turtle purposes.

And I would point out that, for

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whatever reason we put an observer on a vessel, they collect data relevant to all of these things.

So if we've got a marine mammal observer out there, they're collecting fisheries data to help with the Magnuson Act management. And they're also collecting endangered species data and vice versa.

So we -- the authority may change, but the work that they do is, we try to make it comprehensive.

So just a couple of sticks. So we combined our observer programs a few years ago into a national observer program that's been sort of organized out of headquarters in the science and technology office.

There's 41 fisheries that are currently being observed. About 64,000 days at sea in 2008. 800 observers deployed. Our coverage rates are pretty broad, anywhere from less than a percent to a couple of programs that are 100 percent covered.

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Tuna dolphin, for example, has 100 percent coverage. Our Hawaii longline fisheries got 100 percent coverage. There's some others that are high.

But generally coverage rates are fairly low, around the three to five percent range. There are a few where they're down around half a percent or less.

I did mention these are sort of multi-purpose programs. We're out there looking at information that weighs on critical information for managing species under both the Magnuson Act and the other statutes.

So a species composition in the catch, biological sampling, age and length determinations that help us produce population models and parameters, information on fishing effort and fishing gear to help us understand the dynamics of an interaction.

It's information that's really critical to technical, or take reduction teams to help design measures to minimize take and

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allow fishing to go forward.

We take advantage of them being out there to tag animals or recover tag information.

And finally, they are constantly collecting information on environmental conditions and habitat where they may find various resources.

We use that data for assessing impact of incidental take, monitoring levels of incidental take, and again, in forming take reduction teams, I already mentioned that.

So for example, when we looked at the Drift Gillnet Fishery in California for shark and swordfish, we found out if they put their -- that most of the animals were taken in the bottom of the net.

So we just made them fish lower and they caught the same amount of fish fishing lower. And all the dolphins and turtles swam over the top, not all of them, but most of them.

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We also put pingers on that alerted dolphins. And so we really got to the take reduction goal. That was the first and most successful take reduction team we've had, is the California Drift Gillnet Fishery take reduction team. That's an example of how that can work.

And then observers also were out there assessing the effectiveness of mitigation. And that information is also available for our enforcement folks.

So if somebody's not following the regulations on that -- we tend to not think of our observers as cops. We don't want people to treat them as cops. But unfortunately, they do provide information that's useful in enforcement actions.

So data reliability was a question. We think our observers are well trained. We put them all through training so that they're confident that they can identify the resources they're observing.

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And they're trained in how to report that information. They're trained in how to dissect fish and collect otoliths or, you know, whatever particular thing we're asking them to do. We have pretty rigorous training requirements.

Our real limitations on observer information tie to the sample size. We typically have, I mentioned, three to five percent in some cases.

So the deep-set longline fishery in the Southeast that takes turtles, we did a regulatory action based on less than one percent observer coverage. It produced a high number.

Takes of rare species in fisheries that have a lot of effort are usually rare events, but collectively they can have harmful impacts on populations.

If you've got a real small sample size, that's going to get projected into a big number. Just -- that's the math of it. And

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if you happen to catch -- and these rare events, I would point out, probably are not uniformly distributed. They're probably an unusual distribution because they are rare events.

And so assuming that they're a normal distribution and projecting that can result in an error. And the only way to correct that error is to provide more observer effort and get better estimates.

So we're always on the lookout for more resources and ways to fund observers.

Catch share monitors, I think, are actually going to be a benefit here. I think there's some dynamic about what the role and responsibility of a catch share monitor on board a boat is going to be.

They may not be as well qualified to collect some of the biological information we'd like, but we know that they will at least be trained well enough to identify species.

And to the extent they really

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boost the coverage rate, we'll get, I think, much better information on species composition and numbers, so that we can do a better job of assessing the risk that that incidental take presents to a population.

It may come at a cost of sacrificing some of the more intricate biological information that we'd like to have.

But overall, I think that's a tradeoff that at least I'm interested in seeing us make.

So hopefully the monitors in the catch share program will contribute to better information on incidental take and bycatch or protected resources.

I think that's my last slide. Yes, that's my last slide. So that's it, thank you.

MS. FOY: Jim, following up on that real quick, I'm not familiar with the catch share monitor name. Is that called something different in Alaska?

MR. LECKY: Well, so for example -

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- I'm not all that familiar with it either to tell you the truth. In the catch shares program, particularly in the Northeast, that there's a -- particularly in fisheries where we're worried about bycatch species, we want to minimize discards.

They're talking about putting monitors on almost all of the boats. So bycatch release could be covered as opposed to 80 percent covered, so that they can monitor the bycatch and make sure that accurate numbers are being fed into the math for administering the catch share program.

MS. FOY: And are these people that are hired by the boat? Are these people that are staffed from NOAA?

MR. LECKY: So those programs are being designed and developed now. And I think that -- I think the gist of it is that mostly it's intended to be an industry pays kind of program.

MS. LOVETT: Yes, I think there

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are three companies that have been approved by NMFS to, and are qualified, to provide catch share and data monitors, those two things. And they're similar to companies that already provide observers, either here in the North Pacific as well as elsewhere.

But I've got it -- Terry can you answer that a little bit better.

MR. ALEXANDER: Yes. I've had both on my boat. We've made three trips under the catch share program and we've been observed twice on two out of the three trips.

One of them with a regular observer who -- the only difference is the regular observer takes biological samples, the other guy doesn't. He's more concerned with discards, discards of everything.

So, you know, we're required to take -- 38 percent of the time have a monitor on the boat, either a regular observer or just a monitor. And so far I think it's working out okay.

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MR. MARTIN FISHER: And you have to pay for it?

MR. ALEXANDER: Not yet.

MS. FOY: I'm just wondering, I guess, if there's a difference in the amount of training between monitor and observer. And since this is, this whole program is getting started, why we can't streamline the process and hopefully --

MR. RANDY FISHER: Well, there is a rub. There is a rub; who is an observer and the amount of education they have to have.

MS. FOY: Oh, the amount of education --

MR. RANDY FISHER: That's the rub. You know, the West Coast, we're going to have 100 percent observers. We contract with a private company that provides observers. But the states want to get involved.

But right now, NOAA has regulations that say if you're going to be an observer you've got to have a college degree

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and blah, blah, blah. And that's the rub.

MS. FOY: Okay.

MR. RANDY FISHER: Okay. So at some point that has to be figured out and right now it isn't.

MR. LECKY: Martin.

MR. MARTIN FISHER: Thanks, Jim. Could you go through the definition of take? Because my understanding is, and I think I heard a member say if you even spit on a dolphin that's, the boat has to be considered a take. And I was wondering if there's any room to redefine that.

For instance, if you're fishing recreationally, longlining, whatever, you happen to hook a tail by, you know, a turtle by a fin. Clearly it's not a mortality issue because the turtle's going to escape fine, he's going to live a long life.

Why is that necessarily considered a take? And with all the observers coming on board, we could be in some serious jeopardy

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with some of these biological opinions with that stringent --

MR. LECKY: So observers won't be calling anything a take. They'll just be reporting the interaction that occurs.

So, definition of take under the MMPA and the ESA vary a little bit. But generally, they deal with harm, harass, hunt, wound, shoot, kill I think is the ESA definition.

MMPA definition is kind of a subset of that harm, or it doesn't have harm, it has harass, hunt, and kill.

And where we most -- so kill is obvious. Harm is usually obvious, not always.

Harassment, we don't know what the hell it means, I'll be honest with you, we don't know what the hell it means.

Sometimes it's obvious, particularly if there's an intent involved. But sort of incidental harassment, you know -- seismic vessels operating in the Chukchi Sea

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can be heard 100 miles away.

And the animal that hears that sound may respond to it, it may not. If it responds to it, is that harassment?

You're walking your dog on the beach, a harbor seal sees the dog and jumps in the water. Is that harassment? I don't know.

MR. MARTIN FISHER: Well, if you're fishing and your line touches a turtle, it doesn't even involve a hook, is that harassment?

MR. LECKY: So, I would argue -- so here's how I deal with harassment. I hate having this discussion.

(Laughter.)

MR. JONER: That's harassment.

MR. LECKY: But here's the issue.

So we want to look at generally, what's the effect. You know, is it something that's going to have an onerous effect on an individual? Or, you know, is it, are you interrupting a mating event, you know, and is

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that not likely to get reconsummated later?
We'd probably call that harassment.

Are you chasing animals out of an important feeding area? We'd probably call that harassment. Is it just bumping an animal off a rock? We will get complaints from the public about, that's harassment and we probably won't respond to it.

Children's Pool is a place in southern California, we're really struggling with this issue. There're 200 animals on a publically important beach that the community, at least some members, want to reserve for a private swimming, or public swimming beach. There are people on that beach all the time, animals are coming and going all the time.

We don't consider that -- I mean, it technically probably could be harassment, but we're not going to waste enforcement resources on that.

So, you know, if you really want to know if something's harassment, the only

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person that can tell you is a judge. And in terms of being prosecuted for it, okay?

From a conservation side, we're really looking at a broader cumulative issue.

Is a human activity going to go into an area and cause so much disturbance that it's going to have a conservation consequence we're worried about?

Then, if that's the case, we're going to engage in dealing with minimizing that harassment.

So, but this stuff about, oh, gosh, I hiccupped and an animal jumped out of the water, you know, those are bar conversations, beer conversations, but they're not anything that you're going to get in trouble for.

MR. MARTIN FISHER: Can I follow up on that?

CHAIR BILLY: Sure.

MR. MARTIN FISHER: Thanks. Well, in my region, specifically, we have a turtle

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issue in the longline community. And we're not talking about litigation. We're talking about if so many incidents of take are counted by observers, then the fisheries shut down.

So it's not a matter of litigation, it's a matter of --

MR. LECKY: So they're not counting your sea lion, or turtle coming in contact with your gear, they're counting the turtle getting caught in your gear, right?

MR. MARTIN FISHER: I don't know. That's my question.

MR. LECKY: They're counting your turtle getting caught in your gear. They want a turtle that's either hooked or entangled in your gear, is what they're considering a take.

MR. MARTIN FISHER: So if it's something that's not dead, that's clearly going to survive, that's still considered a take?

MR. LECKY: That's a take.

MR. MARTIN FISHER: Okay.

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MR. LECKY: And depending on how it's hooked it might be considered a mortality, because not all of those animals survive.

MR. RIZZARDI: And some of those biological opinions distinguish between mortality versus non-mortal take.

MR. LECKY: Well, so for a hook, for a hooking, a hook on release, the observer will collect information on where it was hooked, you know. So was it just in the bill or was it in the carapace or was it, the hook had been swallowed deep in their gut?

And then that information will get considered later. And some portion of those that are hooked deep in the gut will be counted as mortalities.

CHAIR BILLY: Randy?

MR. CATES: Jim, thank you. The ESA process is affecting Hawaii greatly, to say the least. We have -- it's affecting commerce in a big way. And the state's not

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sure what to do.

With the coral listing, the agencies, both NOAA and Fish and Wildlife, they're not sure which direction to go.

We have three harbor projects completely on hold for several years now. So there's got to be some direction given to the regional areas on what they can do.

I mean, an example is if coral grows on a piling, they're not allowed to remove the piling. They've got to have a mitigation plan for removing coral. And to me, it's just a zoning issue.

So that's one area that needs some attention. I know you're doing the coral listing right now. That's of great concern.

The other is, when you do put a species on the list and they recover, it appears that, for political reasons, the science is not being done to delist them. And particularly the green sea turtle in Hawaii, that appears to be the case.

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They were listed, I've got a list here, 1978. In 1996, NMFS and Fish and Wildlife adopted a policy of distinct populations, in other words, they recognize that certain areas are doing better than other areas.

In 2007, there was a five-year review. And the council asked NMFS when was the plan to do the science, the biological review. They were given a letter that said it would be done in 2009. It wasn't. And now they're being told that it's going to be, biological review to begin a global turtle status review.

And that really is concerning because back in early 2000s, it was distinct populations. And now they're talking, well, we're going to do a global review.

And clearly in Hawaii, we talked briefly yesterday about when you protect one species how it impacts another, and that's what appears to be happening in Hawaii. There

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are literally turtles everywhere.

The science shows that in -- I've got the dates here -- but there was a science study, which basically says they can take up to 200 tons, back in '06, of turtle a year with no impact. 200 turtles, I'm sorry. It was 200 turtles but 10 tons, which was a big number in my opinion.

So the question I have -- there's two questions. One is, the fundamental one, there's a lot of science that needs to be done --

MR. LECKY: Right.

MR. CATES: Are the resources within NMFS going to be taken away because of the Gulf spill?

We heard that a little bit this morning, you know, that things might not get done because you don't have the resources, they're all going down to the Gulf.

And when can we get the science done to -- you would think NMFS would want to

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promote the delisting of species, and that's a good thing, it's a success story.

MR. LECKY: So, yes, I agree with that. We do want to. It is largely a resource issue.

We have completed our five year status reviews for all of our turtle species and decided we, for most of them, we want to take a hard look at their status.

Most of the species are listed globally and don't have populations identified.

Green sea turtles are a little bit different. When they were listed back in 1978, there were some nesting assemblages that were identified. It wasn't really a determination that they were distinct population segments, Hawaii fell out of the nesting assemblage.

Baja Mexico fell out of the nesting assemblage; Hawaii clearly is a distinct population segment; we probably don't

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need to go back and revisit that too much.

But we want to take a look at that for a number of our other turtle species.

I think our priorities were a little bit reprogrammed by petitions we got relative to loggerheads.

So we've got a petition, I forget who they're from, we got one to look at North Pacific -- got a petition to consider loggerheads in the North Pacific as a distinct population segment, please list them as endangered.

And then not too long after that we got another petition to consider loggerheads in the North Atlantic as a distinct population segment.

So they were good petitions, they had a lot of information. We accepted them, we decided to do a status review and we agreed to go through and do that, so.

One of the unfortunate questions you have to ask when you do a delisting or

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reclassification of a distinct population segment out of a global listing, is you have to address the question, well, what's the rest of it. What's left? And what's the status of what's left?

So when we looked at North Pacific and North Atlantic loggerheads to decide whether those were distinct population segments, we looked globally at loggerheads and looked at well, how do these all weigh out, and found that there was a pretty strong rationale based on movement patterns and genetic data that there are probably nine distinct populations of loggerheads globally.

Northwest Atlantic, not just North Atlantic and North Pacific, fell out and have separate ones.

So we're going through a process now to identify those and list all nine of those and do reclassifications of those.

That's going to create a workload. And we're going to have to go back and

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revisit a bunch of consultations about the thing that we did.

And yes, and the Gulf is going to take resources, I'll be honest with that. But I think we have consistently said that, you know, once we get through the loggerhead thing and get through these petitions, we're going to turn our resources to green turtles as our next priority.

And then we're going to go back and look at leatherbacks after that. So that's our game plan. It is hard -- taking things off the list is, I think it's important.

I think, you know, a couple of years ago there was a big debate in Congress about whether ESA was a failure or not.

There was a camp led by Congressman Pombo that said it was a failure because nothing ever comes off of it. The broader camp, I think, said it's a success because most things that are on it aren't

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going extinct, they're actually improving or stable.

So I don't know. But, yes, we would benefit if we could take some things off. Green sea turtles in Hawaii is a huge, is probably ripe for that, we just need to find the resources.

MR. CATES: I guess my follow-up would be what -- MAFAC should consider what is a reasonable timeframe to have the work done. I mean, five, ten years? If this was lingcod --

MR. LECKY: Yes.

MR. CATES: -- and it was put on a list and you had to wait five, ten years for, from the time it's very obviously recovered, to delisting --

MR. LECKY: Right, right.

MR. CATES: -- that's probably not going to be acceptable in a lot of regions.

MR. LECKY: Well, so, I mean, just taking it off the list is going to be

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controversial, and then -- try to anticipate that.

But the timeframe thing is, you know, it's probably under one year once you start the process, two years to get through it. So.

CHAIR BILLY: Paul?

MR. CLAMPITT: Thank you, Mr. Chairman. Jim, earlier in your presentation you said that you were surprised that oil companies hadn't asked to delist sperm whales.

And, you know, I've looked into that a little bit myself because we're kind of being harassed by sperm whales in the North Pacific.

(Laughter.)

MR. CLAMPITT: I've looked into the information that's available, and as you mentioned earlier, you know, the last study was done like, 1980 by NMFS, or I don't know who did the study.

But I actually contacted somebody

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in the protected species website and I asked the question. And they said, well, the first thing they had to have was a population database. And then they needed 40 years of the species to increase by one percent a year before it could be taken off the list.

But if they had a good population database, they might be able to pull up to threatened level within three.

And, you know, I'm wondering, you know, what does it take to get that data? I mean, really, 40 years. I mean, if -- I mean, do you have a comment?

MR. LECKY: Yes, I'll probably get in trouble.

So all the great whales were listed under the Endangered Species Conservation Act of 1970, predecessor to the Endangered Species Act.

Weakness in that statute was, you can only be listed if you were endangered, and you can only be listed if the entire species

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was endangered. That was -- so you kind of waited until you were at the end.

So, and that was when failure of the IWC to adequately regulate international whaling was prevalent. Declining of major species like blue whales and fin whales was evident.

Sperm whales were harvested pretty heavily, but not necessarily to the extent that baleen whales were. So there are a fair number of them around.

So if you really, if you took an approach that the primary threat to whales was removed 40 years ago, i.e., there's no more commercial harvest of sperm whales, there still is some minor incidental catch and fisheries in some places.

And you look at what we know about the abundance of sperm whales. There are a lot of sperm whales in some areas, worldwide population's probably close to a million animals.

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So, you know, I'll be honest with you. My agency is not going to make this argument, but somebody from the outside can make an argument like this and we'd have to consider it.

We're going to -- our interest in sort of looking at this, and I think the feedback you got, is what we don't know about sperm whales is they have a really interesting reproductive strategy.

Most of the males hang out in the north most of the year. Most of the females hang out in temperate and tropical waters most of the year. And they get together somewhere for enough time to do their business and procreate.

But we don't really know that, where that happens or how that happens. So we don't really understand the population structure. And so there is concern that at least some of the populations might not be recovering as fast as others.

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And there may be some areas where population structure is such that there is a risk associated with the fishery interaction or an offshore development activity.

And we want to understand the population structure and dynamics before we take it off the list and remove the protections of the Endangered Species Act.

So that's sort of what my agency would respond to if you just asked us to consider it. But if you presented an argument that we'd have to consider in a petition, I think we would have to go and do a hard job of looking at that.

We might not accept it, but, like I say, the reason that they were listed has long since been eliminated and there really hasn't been a real threat to them since then.

So it's just -- not understanding the population dynamics and structure of that species and how it, you know, divides up its resources is our challenge and one of the

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impediments that you'll run into. Yes?

MR. CLAMPITT: Well, as a follow-up, this is an animal that -- are you familiar with Ann Bowles?

MR. LECKY: Yes.

MR. CLAMPITT: She told me that animal should never have been put on the list.

MR. LECKY: Right.

MR. CLAMPITT: And she's one of the foremost experts in the world on cetaceans. And this is an animal that, you know, could be delisted. And we need to put some money into the research to do that because it has the potential to shutdown a 200 million dollar fishery.

And there's no effort. And so that's our frustration. You know, we see an animal that -- I mean, when I first started fishing in 1980, we never saw a whale. I mean, it was an event. And now they circle the boats.

MR. LECKY: Right. Right.

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MR. CLAMPITT: So, you know, we're trying to work -- you know, I mean, it would help to have some kind of guidance in how to go about delisting this thing.

MR. LECKY: Well, the reason I said oil companies is they're going to be affected pretty soon as you try and go forward with processing permits for harassing animals with seismic work.

But say they -- it's hard to say that they harass just a few animals. They may pursue that in their own right.

Most of our offshore cetacean work is multi-species in nature. We try to do cruises, you know, in the California current. We try to do cruises around the Hawaiian Islands. And we're trying to get one off the ground in the Pacific.

It had been mentioned yesterday we're working with MMS to sort of recreate the historical monitoring programs on the East Coast and in the Gulf.

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We need resources to do those kinds of things. Those are the things that provide us the information to at least know what population abundance and trend information in waters, you know, the U.S. EEZ and waters immediately adjacent to the U.S. EEZ.

It's hard for us to survey much beyond 300 miles, but typically we try to do that in those surveys.

The duration between surveys has gotten longer and longer so the reliability in the information they produce is lower and lower. It's really a resource challenge to keep those going.

And then to look at globally, species, you know -- there is no harvest on sperm whales, so actually getting data on sperm whales to answer the questions about population structure is pretty challenging.

I mean, they're reliant on sort of opportunistic events like mass strandings or

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the occasional fishery interaction with somebody might actually kill one and just trying to find stuff to be used.

But, yes, I think, you know, where Ann's coming from is that they never were extremely depleted by commercial whaling. They were precluded from commercial whaling before the population has severely collapsed, and there really hasn't been a risk before them.

Adding all of the great whales to the Endangered Species Conservation Act was in large part, my view, an emotional event because of the, you know, politics and concern about environment at the time.

CHAIR BILLY: Okay. I want to move on.

MR. LECKY: Tom had a question.

CHAIR BILLY: Thank you. Tom? No, you can stay up there. Next --

MR. RIZZARDI: The Endangered Species Act is sort of the last mechanism to

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prevent species extinction. And I think one of the things that's coming out in this discussion is it's not a surgical law, it's more like a sledgehammer.

MR. LECKY: It's true.

MR. RIZZARDI: You know, the congressional language here is very strong. And I've spent a good part of my career on the Endangered Species Act and Jim, I have tremendous sympathies for your staff and what you're wrestling with.

One of my frustrations is that your group possesses this tremendous expertise and should be setting the priorities. But unfortunately, what is increasingly happening is your priorities are being established by third-party groups that are filing petitions and going into court to get new dictates and new orders that say you shall act by a certain date.

I think right now we're facing a new level of this problem. Jim, I looked at

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your timeframes, your workload, and you're wrestling with a petition to list 83 species of coral --

MR. LECKY: Right.

MR. RIZZARDI: United States Fish and Wildlife Service is wrestling with the petition to list 404 wetland species. And in these instances, the deadlines in the Endangered Species Act simply don't work.

It's just unrealistic to expect you to make an initial determination in 90 days or to make a final determination in one year. It just can't happen for that many species.

But statute says what it says. And you're stuck with, respond within a deadline or else, pay court fees, pay attorney's fees. So you do what you have to do, you shift your resources, all the other priorities suffer.

Paul, the things you're suggesting should be done don't get done, and everybody

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here is frustrated over it.

I think MAFAC needs to make a narrow statement on a tough topic. And I think we should be encouraging congressional action.

I think that the current events suggest a need for at least a narrow revision of the ESA and these timeframe issues, because the third parties are driving the priority list. And I think it would be appropriate to revise the timeframes and use the language that's in the Federal Administrative Procedure Act.

Instead of a 90 day timeframe, instead of 120 day, or instead of a 12 month timeframe, we should be talking about an unreasonable delay standard.

And that would give at least some discretion to the agencies and the experts to actually deal with these issues on a reasonable basis, and not have every single petition, have them, you know, jumping,

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dropping every priority and addressing whatever third party says needs to be done immediately.

MR. ALEXANDER: I agree.

CHAIR BILLY: So moved.

(Laughter.)

All right. Ed?

MR. EBISUI: Thank you. I wanted to add just a little bit, back to turtles.

MR. LECKY: Okay.

MR. EBISUI: -- and specifically green sea turtles in Hawaii. You're familiar with George Balazs?

MR. LECKY: I know George.

MR. EBISUI: Yes. I heard him to say several years ago that the green sea turtles around Hawaii have recovered to the extent that they're multiples of their highest levels since records were being kept.

And, you know, I can, just from my own observation, I can vouch for that. We have so many green sea turtles that they graze

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the reefs down to bare.

I mean, it wasn't 15, 20 years ago that those reefs were just full of algae, different types of algae, which plays a big role in recruitment of reef fish, which plays a role in the food chain for pelagic fish.

So it's something that affects from shoreline all the way out into the deep.

But there's so many green sea turtles now that those reefs that were once just covered with algae are bare. It's like sheep on land, you know, they'll just graze it down to nothing.

So I think that, you know, it really is time to start looking at delisting green sea turtles.

The other point I wanted to raise is that if you check with OLE, the Honolulu Office of Law Enforcement, they will tell you that the majority of the whale strikes are done by the whale watching groups.

MR. LECKY: Right.

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MR. EBISUI: Not by fishermen, not by boaters, but by ecotourists.

MR. CATES: And the second is Coast Guard. I'm not kidding.

MR. EBISUI: Second of what?

MR. CATES: The Coast Guard has struck humpback whales in the --

MR. LECKY: Yes. And so, I mean, we put that regulatory approach distance in Hawaii to avoid the whale watchers.

MR. EBISUI: I'm not aware of anything being done about the strikes by these tour boats. And I think it ought to be.

MR. LECKY: Okay.

MR. CATES: Can I add one thing to that real quick? One other issue is human safety. Tiger sharks are the main predators of turtles. We have an overabundance of turtles, we have a lot more predators there. And over the years we've seen the effect of that.

This is not just a warm and fuzzy

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thing, this is a serious issue. It's affecting Hawaii. I mean, it's -- there's a cultural aspect, a human safety aspect, and a biological aspect that the work has to be done. Things are not in balance.

MR. EBISUI: There is another aspect to what Randy just said and that is, we have two shark tour operators out of Haleiwa, my hometown. And they feed sharks. It's against the law, but they continue to feed. The state's doing nothing.

OLE did undercover, documented violations, consistent violations by both operators, turned over the entire package to the state Department of Land and Natural Resources, which has done absolutely nothing.

And the science has shown that through the ten years they've been doing their operation, the species composition of the sharks in the area have dramatically shifted away from the naturally occurring smaller sharks to the larger Galapagos and tigers.

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So what Randy's saying is absolutely true. We got a lot more tigers close to the shoreline now than before.

CHAIR BILLY: Okay. Tom?

MR. RAFTICAN: Couple things. First of all, Keith, thank you for bringing up changes in the ESA. It's the politics involved in a lot of the stuff is the overriding thing.

It took Nixon to get involved with going to China, it took Clinton to get involved with healing welfare reform.

If you're going to change the ESA, it's going to take an environmentalist stepping up to that, as opposed to one of the consumptive side because it looks like we've got too much of an iron in the fire. Thank you for standing up for that.

One of the other things that -- last time I looked we don't have any pterodactyls around. There's a natural course of evolution, and part of that is the fact

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that you will have some species become extinct.

In the case of 82 corals, we've got global climactic changes that will drive much of this. Where does this come into the fact of -- where does, you know -- it seems like the process is sometimes bigger than the solution.

MR. LECKY: I don't have an answer to your question, but I have a comment.

So in a climate changing world, our environmental statutes are way inadequate.

And the reason is they presume a stable environment.

Our goal is to return a perturbed system to a historical standard under the ESA, and in large part, under the MMPA. And I would argue that Magnuson Act does that same thing.

You're trying to, you're making an assumption that you've got a stable environment and that you can manage your

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resources, you can perturb them and manage them so that they will return to some stable level. Well, that, in a climate changing world, isn't going to be there.

Kind of my favorite example I like to use in this discussion is rainbow trout in southern California. Turns out rainbow trout's a pretty amazing fish.

It used to spawn in Baja, California. Its range has contracted to southern California. The fact that there's a rainbow trout in San Diego County amazes me, but they're there.

But they're not going to stay there in a climate changing world. That water's going to get too hot no matter what you do, and ultimately it's going to reach a temperature where they can't survive.

So that's an example of where I think we can find a fish that we really could decide, well, under our stable projections, or requirement to seek stability in the

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environment under our statutes, that's a species we're going to try to save in San Diego County, because if we decide not to save it, Cal Trout or somebody's going to come in and say no, you need to save it. And the judge is going to say, yes, you need to say it. And so we're going to invest in it.

So, but then the challenge becomes if any of us could change that stable assumption and get some flexibility put into the system, I'm not sure that we know enough about how these systems operate to be able to distinguish a species that's changing its distribution as a result of climate change and really isn't at any greater risk, versus a species that's being wiped out locally because of some human interaction with that species.

And, you know, until we develop the science to be able to distinguish those kind of characters, we're going to have a real hard time dealing with changing environments.

But one of the things we need to

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do is, and I think one of the things -- so, you know, Center for Biological Diversity is the environmental group that's filing all these petitions for polar bears and ice seals and 82 corals.

And the reason they're doing that is this issue, that, you know, the environment's changing, we don't have a good regulatory framework, Congress, the United States hasn't stepped up to deal with climate change.

We didn't approve Kyoto Protocols, we didn't step up at the last summit, and Congress hasn't, you know, they've been struggling with how are they going to do this, cap and trade, some other mechanism.

But we haven't taken this on as an issue in our society. And so we're stuck with trying to preserve things in areas that they might not be able to persist in.

But unfortunately, that's where we are, and we're going to potentially put some

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of our important resources and use them maybe not in the most appropriate or most conservation-oriented way as a result of that.

CHAIR BILLY: Jim, I had a question that was -- before the meeting started I was thinking about, well, how can MAFAC help, you know, as sort of the generic how can we help in this important and broad area.

Are we on the right track? You know, if the committee takes positions with regard to green turtles and sperm whales and perhaps changes to the ESA, is that the kind of --

MR. LECKY: I think --

CHAIR BILLY: -- advice, clear statements about that that would be helpful to you?

MR. LECKY: So as I understand your charter, I think things like recommending amendments to the statute might be a little broad.

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I think those are good recommendations. I, you know, I would love to have some of those deadlines be more flexible. That certainly would help us.

I would be comfortable receiving recommendations from MAFAC that suggested that, you know, the Endangered Species Act is an important tool, it's an important piece of legislation, it's an important responsibility of National Marine Fisheries Service, and you would like to see us, you know, pursue the successes by delisting things that appear to be no longer at risk.

And some candidates are -- certainly green turtles are a good candidate.

I mean, there's a well published and received history of the recovery of that species. And I think there's pretty broad acceptance in the community on taking that out, taking it off the list.

I know we're going to run into concerns because people are concerned there's

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an inadequate regulatory mechanism to deal with harvest, you know, if we take it off the endangered species list.

But that's a challenge to take on with the state of Hawaii. So maybe you could add a recommendation like that.

So I think those kinds of things would be comfortable, receiving those kinds of recommendations.

We are going to be -- I did mention that the Obama administration was looking at regulatory changes. Couple of things that we've been really trying to get across in the agency are simplifying the critical habitat designation process.

Our current regs are confusing, have confusing terms in them. We'd like to simplify those.

There's some, we've been hit with some unfortunate lawsuits about having to provide specific incidental take statements in programmatic biological opinions that have

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sort of, are impeding our ability to be efficient programmatically.

And we think there's some things that we can do to change those. Those are issues that we're going to be floating up in the administration later.

And as they come forward as things to be fleshed out and talked about, I think I'd like an opportunity to bring those things back to MAFAC so that you have an opportunity to look at how those unfold, and maybe provide some guidance on how you'd like to see us address things like critical habitat designation or other specific issues that we'll look at, things of the nature.

CHAIR BILLY: Okay. When the subcommittee meets, I think we need to carefully look at the right approach and wording to be helpful in this area.

I appreciate your presentation. Thank you very much.

Okay. We're now scheduled for

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lunch. Any announcements? No? Other than --

MR. LECKY: Have you got your pie requests in?

CHAIR BILLY: Other than pie requests? All right. We should be back about 1:15. Thanks everyone.

(Whereupon, the foregoing matter was in lunch recess from 12:17 p.m. and resumed at 1:38 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:38 p.m.

CHAIR BILLY: We'll get started again. Okay. Okay. We have on the phone Paul Doremus who is the Director of Strategic Planning for the NOAA Office of Program Planning and Integration. We've heard from him before in Monterey.

And he's going to share with us the status of the work he's been involved in, and I assume leading, on developing strategic, a new strategic plan for NOAA. So Paul, the floor is yours.

MR. DOREMUS: Thank you very much.

And I really regret not being there in person to talk with you, it was just the logistics of getting out to Juneau at this point in time were too difficult to manage.

So I appreciate the flexibility in allowing me to do this briefing virtually, but please accept my regrets. I would much rather be there than sitting here in tropical

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Washington.

Since you are starting a little bit late, I will perhaps do this, and since there's a premium here on conversation anyway, I will perhaps do this presentation quite quickly.

You should have received a copy of the next generation strategic plan already. And I'm going to provide a little bit of backdrop to sort of draw some connection back to the time that I spoke to you in Monterey, describe briefly how we got to this plan, and then what its central features are and open it up for conversation.

So I'll move fairly quickly and move from the cover page here to the first page.

Slide one just emphasizing that this plan is a plan that we are implementing, we're going to be using it for strategic decision making in the organization, connecting our vision to our goal, and our

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investment strategy will follow from that.

We have this framed as essentially long-term vision and the goals that support that, on a kind of 20, 25 year time frame. With the five year -- what the objectives spelled out was a five-year time frame in mind. So that's kind of nesting the near term in the context of our long-term purposes.

And we built this whole thing in a way that it really is rooted in extensive consultations, both internally and externally, and that have included the input from you all, looking back to Monterey and to the documents that you produced, principally Vision 2020, that we used as source material.

And these, this next slide, staff and stakeholder knowledge, has indeed been central to our strategy development.

When we last spoke we were in phase two, when we were speaking with all of our advisory committees and cooperative institutes, a lot of others externally, and

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internal consultations, lines, et cetera.

And we are now going back to that same group of people who provided input internally and externally in phase five. We are right at the outset of phase five.

A big piece of the consultations, in addition to our advisory committees, the external consultations involved regional flora. This is new to NOAA. This next slide, slide four, we conducted, across eight regions, 21 stakeholder gatherings.

Some of these were direct, as the pictures indicate. Others were virtual through WebEx and other kinds of mechanisms.

And we were fundamentally asking the same types of questions we were posing when we spoke in Monterrey about long-term trends, shaping our future, many of the types of things outlined in your Vision 2020. Challenge is an opportunity to trend, create and what we should do about them.

And we also did, as slide five

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shows, a approach, an online approach that allowed us to collect input. We got about 1,800 responses from both internal and external sources.

This graph just briefly shows you the kind of distribution, internally in green, and externally in blue, of input on the same lines of question.

Slide six, just a few slides here to give a very brief, and it's not cursory, overview, of the type of input we got.

We have written reports from all of these consultations. Some are reports from the region, some are reports from national, our national online engagements, some are reports from a forum that we held here in December in Washington that was national in scale. All that's online on our website, which I'll point out in the end.

And this is just a very, very quick summary of some of the major themes, big messages we took out of that input.

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The largest one, in terms of directional changes, really centered on climate. And some past descriptions, we've said that issue number one was climate, and issue two was climate, issue number three was climate.

It's just different reflections of what kind of issues, related to climate, people were concerned about.

Big emphasis on stepping kind of global understanding of trends down to a regional scale, and being able to patch our knowledge to different types of tools that will allow people to understand potential impact and make, in particular, management decisions related to those.

At the same time, the second goal is a lot of people are saying don't forget, there's a lot of other major things that are changing that we need to pay close attention to as well. It is not just about climate as far as environmental stresses go.

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There's the long and continuing trend towards greater density of populations at the coast that where, you know, coastal ecosystems are particularly fragile, and all the kinds of associated resources these patterns could go along with it. More people or more economic activity, concentration of both of those in the coastal arena in general.

And another very, very strong message, one that we were not necessarily anticipating, from our external stakeholders and partners was do not lose sight of the continuity of what it is that you are currently doing.

So no big message in terms of the composition of work that NOAA currently is doing being wrong.

People were saying you are collecting the observations that we need, you're doing the monitoring that we need, you're doing the science and the predictive tools that we need. Don't lose sight of that

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core function.

Fourth message is, you know, with that said, NOAA could be better at delivering its science and data information to managers in ways that help improve management divisions and understanding of scientific information purposes.

And a final message, which was a little bit surprising to me I have to say, just in terms of its volume and its consistency across all of these different communities, is the importance, broader speaking, of an environmental literacy and connecting with the public at large, and trying to gradually work toward a better-informed public that's making more effective environmental decisions.

And the next slide, slide seven, is my final one on common messages. And we actually didn't ask the questions about how NOAA should work, but we sure got a lot of input about it. We captured it.

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And some of this stuff should be familiar to you from your own work. And some of its, including first point, you know, was captured in your Vision 2020 document, the importance of effective partnership and collaboration in all dimensions of NOAA work.

A strong message from the regions was figuring out how to do that with these emerging regional ocean governance bodies. So that, in fact, was sort of partnership and collaboration message.

In effect, the two points really relate to connecting our information to users more effectively. That involves both data integration, across different platforms, different sources, owned by NOAA or not, and improving our ability to kind of deliver information through different types of efficient support tools and technology.

A fairly strong message, again, a surprise to me, about federal use of local expertise and local ecological knowledge, and

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informing regional and local scale ecosystem decisions and management decisions in particular.

And finally, and what we hope the plan actually contributes to, there's an awful lot of stakeholders who felt that NOAA was not effective in articulating and indicating work, what it does, and why that's important.

An overarching vision for NOAA, one that ties together all of the organization's functions, people feel that NOAA is known and better understood, we'd be better supported. We certainly agree with that and hopefully we're taking a step in that direction with this effort.

So we pulled all these together, slide eight, all this information into a set of considerations in NOAA for what our goals should be.

We were looking at long-term trends, how society would benefit from our focus in different areas, what our underlying

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kind of statutory drivers are, our capabilities.

And those things all came together in a decision matrix, it's my last slide here, slide nine, on content, and then I'm going to review very quickly the core content of the plan.

But this is how we use that input to make decisions about what our goals should be. We looked at the kind of public sector analogues to potential profitability and organizational fit, market attractiveness fit to organization.

So we call it our contribution to society and fit to NOAA. The first piece of contribution to society is where we brought in our views, some are various, a couple external and internal consultations, including discussions with administrative leadership here in NOAA and in the executive branch in North Hill.

We tried -- we did, and I talked

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to you about this in Monterey, we did do a broad scenario assessment of the future.

We're trying to make sure we build an organization that's adaptive and to respond to alternative scenarios as the future might evolve. We use that as a rough test of organizational adaptiveness and flexibility, that's a kind of robust criterion.

And in fit to NOAA, distinctiveness is something that can't really happen without NOAA's contribution, and it is feasible for us to actually execute with reasonable or foreseeable capabilities either internally or through partnerships.

So that was our decision criteria.

And I should say that one of the ways that we went about this plan from the beginning, with a, kind of end in mind, we have built this plan to reflect the full breadth of NOAA's executing organization, and we've built it with the contribution of people from our executing organization.

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We're trying to move beyond a kind of, an overly stylized wedge between our -- speaking in the organization about goals in an integrated way and the executing capacity of the organization.

So this plan was built to a steering committee that we managed here in PPI, that I managed, but it involves senior level representatives from each of the lines.

And the representative from the National Marine Fisheries Service was Usha Varanasi, and she was very capably supported by Michelle McClure.

So they provided sort of the peak level of source of input into this from the fisheries' perspective, and contributed quite substantially to the content in particular features, which I'll point out.

So the, I'm going to, you know, switch now into a kind of a single slide overview of the plan. And if you may just want to click there Heidi, you'll get the

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whole picture on the page there.

MS. LOVETT: Okay.

MR. DOREMUS: It's our strategy.

(Laughter.)

It's what they say about beauty in the eye of the beholder, right?

CHAIR BILLY: Well, they're laughing because it's blank right now, Paul.

MR. DOREMUS: I know. That's, it was intended to be a joke. This is actually a step-through slide. And if, Heidi, you could just re-click, you're going to have the mission show up. But I have pause at that point, just to see people's reaction to a blank page for strategy.

You can really start by thinking about NOAA's mission. We have crafted a new version here. I think it's, in a sense, a variation on a theme that NOAA has been using.

It broadly goes under the category of science, service, and stewardship. That's fundamentally the mission domain.

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We've captured here is understanding and predicting changes in climate weather as it occurs, sharing all the information with others in conserving and managing those marine resources.

That you'll -- if you hear our administrator speak, she very typically uses the construct of generating knowledge, sharing it to our services and our information and with our stewardship function of conservation and management. So that's the current expression of our mission statement.

And one more click is going to give you the vision of the future, right in the center of things. And I'm going to build out from here.

This is a very, very different vision. It's built around the core concept of resilient ecosystem communities and economies.

If you speak to Dr. Lubchenco and understand what she means by resilient ecosystems, and many of you in the room there

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might share this view, that encompasses the human components of ecosystems.

That, in various interactions we've had with people, that's not a broadly shared view, in a sense ecosystem communities and economies is redundant.

But we're really trying to emphasize here the relationship between people and the natural world, and that overarching vision, the thing that we're striving for in all of our work, ties together everything that NOAA does from weather forecasting to fisheries management.

It's the healthy ecosystems communities and economies that are resilient in the face of change. All manner of change, dramatic, the human, the catastrophes like we're seeing in the Gulf of Mexico, natural catastrophes like severe weather, and everything all the way through to long-term climate change and long-term change in ecosystem dynamics that are determined by

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complex factors.

So we have four dimensions of this vision that we've set out long-term goals in.

One more click gives you our first dimension, climate.

Our long-term goal here is a -- and these are kind of outcome-oriented goal statements and I'll step to these in greater detail in just a second, it informs society anticipating and responding to climate impact that has several near-term objectives.

One more click is our second dimension of a weather-ready nation.

A third click gives you our third dimension of healthy oceans. Again, our impact, long-term impact statement there of vibrant marine fisheries, habitats, and biodiversity sustained within healthy and productive ecosystems. I'll give you detail on those in just a second.

And the fourth dimension, with one more click, is resilient coastal communities

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and economies.

This is our core outcome-oriented goal structure under this vision of resilience. It has essentially climate, weather, ocean, coast dimensions.

This is a pretty different construct than what we had in our prior generation of planning. And we can discuss what some of those differences are if you would like.

But I want to point out a key thing here, and it starts with the next series of clicks. If you just get one, you'll start to see that all of this rests on -- and the color difference is significant here. Our capacity to realize these goals is rooted in the underlying enterprise functions of the organization.

This first cut here is showing you our science and technology capabilities, research capabilities, our data and earth observation capabilities, and our

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environmental modeling capabilities.

These things connect the type of enterprise issues that we're -- or capabilities we're highlighting here all connect in some respects to some of the cross-cutting things that I remember seeing in your Vision 2020 document, where you were pointing to data, to technology, to collaboration, being cross-cutting issues.

The technology and data are on this side of enterprise, science, and technology. The second click gives you where the collaborative capabilities are.

We're calling enterprise engagement and include public, educating the public, that's informed society, again, referring back to the stakeholder input on the importance of that.

The second dimension is regional scale, capability to integrate services. And the third is international.

Again, those are kind of

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components of a collaboration that I think has been recognized by you and your document.

And then the third click is common to most organizations, how we manage our core organization, administration functions, IT people, and our capital investments.

So that now is, not in all the blanks, but that is NOAA's strategy on a page.

That, in a sense, is the entire strategic plan and it's the kind of first thing that you see when you open the document up.

That's how we tied the pieces together and connect enterprise capabilities to long-term goals.

And what I'll do very quickly here, in the interest of time, since we're coming up on about I think a little over 15 minutes, I'm going to just reference very quickly the composition of each of these goals.

So one more shot and you're on slide 11, climate adaptation and mitigation.

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Our long-term goal statement is the first bulleted line, and these are our five-year, kind of outcome-oriented five-year objectives, include the research objective, integrative substance objective, climate services objective, that is what is most new, was not in our prior generation of plans.

And then a particular focus on climate, on a climate-literate public, which is distinctive.

One more slide and you're looking at our, kind of our core weather functions. We're looking at an outcome that we're calling weather-ready nation, the idea being prepared for it, responding to weather-related events.

And you'll recognize our kind of core weather-related capabilities here, high impact events, water prediction, weather related to transportation, air and water quality, and a variety of things that we do that have arrangements, based weather impact on communications to forecasting that effects

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energy and agriculture sectors in a big way. So that's our basic composition of our weather-ready nation.

One more click gets you to the one that I wanted to pause on a little bit, and this is the composition of our healthy oceans goal.

Overarching goal for NOAA here are vibrant marine fisheries, habitats, biodiversity sustained within healthy and productive ecosystems.

You are, I'm sure, quite aware that we, our goal structure does not include a singular goal on ecosystem approaches to management as we had before.

The entire theme, and indeed the vision, is informed by ecosystem thinking. And the framing of a lot of our management functions, both here and the next goal, center on ecosystem approaches.

Here that includes a core kind of research objective of improved understanding

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of ecosystems to inform resource management decisions. We're going to apply focus there.

Second objective being our kind of core management function in the underlying statutory drivers that you are also familiar with, with Magnuson, ESA, and MMPA among others.

Habitat dimensions of that, a part for sustaining resilient and thriving marine resources and communities.

And fourth, take as an example seafood.

The composition, the approach to this whole goal, I think you will see a great deal of resonance with your Vision 2020 document, both in terms of the trends that we recognized in the outset of this goal, as well as to our casting of the requirements and nature of several of these objectives.

And I also do recall kind of two things that I really took away from our Monterey discussion.

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One was related to, I guess I would say in my mind, an accent in your Vision 2020 document on aquaculture, and what you felt is kind of the inadequate attention to the strategic significance of that.

And our faith in sustainable seafood for healthy populations very much centers on that and other dimensions of seafood inspection and seafood safety issues that you recognize in your plan.

And second, something that is not in the Vision 2020 document, we discussed at great length, John Stein provided a presentation on this in Monterey, and that was on ocean acidification.

That shows up in several places in this plan in the very, very front end. It shows up in climate, it shows up in healthy oceans, it shows up a little bit in our next goal on coastal related issues.

And it is an issue very, very close to the thinking and the interest and

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concerns of Dr. Lubchenco. And many of you may have heard her on that topic.

So I just wanted to draw some references there to our discussions in Monterey and how that factored into some of our thinking.

Last is our last goal on resilient coastal communities and economies. This is, again, this is a focus more on the human dimensions and impacts.

And the composition of the goal here centers on resilient coastal communities, in particular the resiliency related to human-induced and natural hazards, as well as long-term environmental trends like climate change.

The second goal is a big focus, as many of you recognize, on recent policy developments in the ocean policy arena that NOAA participated in heavily.

This one is focusing on the need for ocean coastal planning and management, particularly our CMSP efforts in spatial

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planning.

And the other, here, kind of core lines of business that NOAA has been in for some time, navigation-related issues for marine transportation, use of water quality assessment capabilities that affect health in coastal ecosystems services, and kind of a cross-cutting goal on safe, environmentally sound Arctic access and resource management.

This has been an area that has, it has multiple dimensions to it, an area of great concern by our current leadership team among others in NOAA.

And we're trying to sort of take a comprehensive approach to that through this redoing coastal communities and economies goal.

So those are the four major outcome-oriented goals. Last slide shows you the basic components of the enterprise objectives, these three dimensions of enterprise, S&T engagement, and organization

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and administration.

I spoke to those earlier, just so you could readily see the components of those things.

Last slide or the next step, we just released this for public review. We had a kind of a long internal review process. It was just confirmed or cleared for release by Dr. Lubchenco a matter of days ago.

I think you were among the first people to get a draft of this. It's now on our website, we've got the six weeks till the 10th of August, I believe.

Our science advisory board and its underlying committees and work groups will be discussing this later in July. And we expect to publish the final plan in August depending on the type of input that we get through this whole review process.

And I'll just leave the concluding slide up there that is the location where you can find the plan. And you can see how we're

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soliciting inputs virtually from that.

And of course with our advisory committees, we're welcome to take input in any number of ways, and hugely benefit from the sort of deliberation and discussion that the advisory committees may have the time to do, and to communicate that to us in any way that suits you, either through this vehicle or directly to us here in Washington.

So that's a very, very quick overview. You have the full document to read and inspect.

And with whatever time the chair is willing to grant, I'd be happy to discuss this further and certainly can talk at a later time with any of you individually as well.

CHAIR BILLY: Okay. Thank you. Let's open it up for any comments or questions. Okay, Tony?

MR. CHATWIN: Thank you, Mr. Chair, and thank you, Paul, for the presentation. This is Tony Chatwin.

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And I just wondered if you could talk to us a bit about how progress towards these goals is going to be monitored and measured.

I know that in the plan that we have before us, there is a section on evaluation, monitoring evaluation. I just wondered if you could elaborate on that.

MR. DOREMUS: We have in the plan established to kind of round out what we're talking about trying to achieve in five years.

We usually -- we have a set of what we call evidence of progress toward each objective, which outlines the type of public benefits or new or improved capabilities we anticipate building. And that gives you a sense of our intended effects.

What our first stage will involve in implementing this plan is looking really closely with specific resources functions over the next five year period, what we believe that we will be able to achieve.

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Our core concept for implementing this plan is rooted in that principle that I mentioned earlier of line office accountability.

And we're working really closely right now with the lines and looking at the regimen systems that we have in place, where we need to adapt them for capabilities to evaluate our success on each of these objectives.

And we will have those as part of our implementation documents. And they'll ultimately show up in budget documents and things of that nature, where we're able to make resource sensitive projections of potential benefits.

So the plan gives you a range of types of areas where we expect to see progress, and our follow-on documents will spec that out in more hard measures, terms. So that's the approach that we plan on taking.

MR. CHATWIN: That sounds good.

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And if I may, Mr. Chairman, just one follow up?

So in terms of timing, when do you expect the implementation plans to be developed, and is that something that will be available for review from us?

MR. DOREMUS: We have set a goal here, NOAA is to implement this new strategy fully in FY13 decision-making cycle. We are -
- FY12 is a transition year.

We're clearly moving down that path internally with our fiscal discussions already in preparation for FY12 budget development, and have started to lay in some of the architecture of this. But it will be fully embedded in the FY13 process.

I will have to tell you honestly I'm not sure we make available publically as much as we conceivably can, as a matter of good practice and principle.

The only things that we cannot do is make any kind of fiscally-relevant

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information, pre-decisional part of the President's budget, as you all know, available.

So when we get to the implementation plans, we will have to see, and since this is a kind of a new thing, we will have to see what portions of those we can make publically available.

I would think that discussions about performance and anticipated benefit would be quite beneficial to all involved, for us to share those. But we'll have to make that decision a little bit later.

MR. CHATWIN: Okay. Thank you.

CHAIR BILLY: Okay. George?

MR. NARDI: Paul, and George Nardi. I read through the document and I appreciate the comments and the interjections of aquaculture.

But I just had one question and a suggestion that at the very end, under Strategic Partnerships, that section, where it

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includes just about everybody, NGOs, academia, recreational, commercials fishing, and there's no inclusion in that section of aquaculture as a strategic partner.

And I just bring that up with the suggestion that it could possibly be put in under Resilient Coastal Communities or Economies, where there's a statement made to encourage smart growth.

And it's just a suggestion, but I think something should be added there where it could be such as sustainable aquaculture.

But when I read through the document and came to this last part, it jumped out at me that there was, that was not included. So I just bring that to your attention.

MR. DOREMUS: Thank you, I appreciate that. And by that, do you mean the private aquaculture industry? Is that your --

MR. NARDI: Private or public, you know, there's not one in that section,

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there's, you know, where it includes all the other potential strategic partnerships.

But I do include private aquaculture as well as public. But in general, it's the subject of aquaculture or the inclusive nature of aquaculture, be it for stock enhancement or private benefit.

MR. DOREMUS: Thank you, and I appreciate that point. I will also note that we have gone back and forth in different constructions. Partnerships are so central to so much of what we do.

We had earlier versions of the plan that spelled out in great detail, within each section, various types of current and prospective partnership arrangements. And it just drove us to too great a length and too extensive a level of detail in many people's eyes.

So perhaps in some respects, we've gone a little bit too general. But that's one of the things that we've been trying to get

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right, is casting the very different nature of partnerships that are required to achieve our objectives in different parts of this plan.

CHAIR BILLY: Paul, this is Tom Billy. One of the ideas that's floating around is the possibility of updating our 2020 document.

MR. DOREMUS: I heard about that.

CHAIR BILLY: And I'd be interested in your views given the work that you've done, the value that you indicated it had in helping you. It obviously cuts at things at a different level, but I'd just be interested in your reaction.

MR. DOREMUS: Well, I'll give you my personal reaction. I think that that document, in both its nature and its content, is extremely helpful to NOAA.

It was certainly helpful to our process of understanding and having a very concentrated place to refer to views of a key community. And the fact that it represents a

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formal advisory committee document gives it considerable weight.

Not all advisory committees do that. And if I had my druthers, I would ask them to do so because I think that it provides a very nice complement to what otherwise would look like a highly internally focused plan.

You also can use your own document in your own ways as an advisory committee that I think you recognize.

And having the documentation and thought behind it, and the committee deliberations, and your ability to communicate your conclusions in ways that complement but are still distinctive to the committees to our budget policy community I think will be very helpful.

This isn't just theory. As I'm sure you'll hear about in the budget discussion, we are facing a highly constrained and very challenging fiscal environment, going forward from where we are today.

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And organizations that have really thought through and tested and gotten the, both the analytical as well as stakeholder driven support behind their plan, I think are in a better position to be successful.

So I would highly encourage the committee to consider doing that. I think for all these reasons it would be quite beneficial to us. Certainly defer to the fiscal leadership on this one, but that's my personal belief.

CHAIR BILLY: Thank you. Other comments or questions? Okay. Well, thank you very much.

MR. DOREMUS: Much appreciated and I hope that the rest of the meeting goes quite well. And I look forward to any input that you have, either collectively or individually, on this up to August 10th. And after that we'll be moving forward in implementation mode.

CHAIR BILLY: Okay. Our

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subcommittee will be meeting later and we'll take that into account in terms of what role we might be able to play.

MR. DOREMUS: That'd be great. And if there would be any benefits for me participating in any other conversations during your deliberations out there, I could, to the greatest extent possible, be happy to try to do that by phone.

CHAIR BILLY: Okay. Well, thank you.

MR. DOREMUS: Thank you. And much appreciate the opportunity. Bye now.

CHAIR BILLY: Bye. Okay. Now, one other item before we break into the subcommittee meetings, that's discussion on budget, and then opportunity for public comment. Mark?

MR. HOLLIDAY: Thanks, Tom. I'm standing in for Gary Reisner, Chief Financial Officer, wasn't able to make the trip out here.

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So it's an abbreviated report but I'm going to try to hit the three topics that were listed on the agenda for consideration on the budget item.

The first relates to budgetary issues related to Deepwater Horizon and the oil spill. I wanted to just give you some indication of what's going on with the financial side of things.

Early on in the process of NOAA's response to the catastrophe in the Gulf, we began a process to track the expenditures both in labor, materials, and other commitments of time and energy of the agency.

In support of activities from the science to the cleanup remediation, any investment of NOAA resources are being tracked that are being dedicated to this effort.

And they're substantial, you know.

Of the 70 people who we have in our Habitat Conservation Office, you know, 50 of those 70 people are working on this Deepwater Horizon

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issue right now.

So that means, as we talked about earlier, the capacity to do other work, meet deadlines that are not related to the oil spill are apparent.

And so for possible reimbursement as well as for tracking and management of our other responsibilities, we're very closely monitoring, with the division, of the workload that's being conducted right now.

We're constantly sending people down to the Gulf, rotating people into the commands and incident command center to help track different activities.

So there is a consequence to this directly on NOAA and, of course, within NOAA, the Fisheries Service directly.

And we are again, for purposes, keeping track of all materials, all correspondence, all information, as well as the labor and materials that are being invested in that.

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On the congressional side, both the House and the Senate have considered supplemental bills. And this is sort of my abbreviated interpretation of what is, was passed to me from the Management and Budget Office.

There are two different versions.

But in general there's a total of \$51,000,000 of many more millions of dollars that would -- the 51 earmarked for NOAA, \$7,000,000 would go to conducting NOAA science.

There's two sources of fisheries disaster relief that -- and these disaster funding monies are for those relief funds that would not be covered by BP.

And so the idea -- Congress is saying these funds are to supplement those deltas, you know, other considerations of relief for the fishermen and the industry and the communities, that would not be covered in the compensation from BP. So it's not a substitute, but it's a supplement.

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One chunk of money, fisheries disaster relief, \$13,000,000, and there's an add-on that's tied to an additional 15 for the Magnuson-Stevens Act, Section 312 relief.

So there's a total of \$28,000,000 in direct fisheries disaster relief that are in these, under discussion in the versions that are being reconciled now.

Within that additional add-on from Senator Shelby, there's direct funding for specific stock assessments and consequences for Gulf resources to try to bring greater clarity to what the impacts are on these living marine resources, as well as \$1,000,000 to the National Academy of Sciences to look at some of the ecosystem services that are affected by the oil spill in the long term.

Gary provided a note that they didn't think there was going to be any action on the bill before their July 4th recess, but this is certainly high on their agenda. And we should be expecting to see some action in

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the near future.

I don't have much more details in terms of being able to ask questions, but if you have specific interest in this, I'll certainly get back to Management and Budget and get the answers for the committee.

So that's the first section if there, any specific things that I can help address. Or does anyone else have any comments or questions on that part.

The second bullet on the agenda under budget that we were going to talk about was budget tracking by priority area.

Those who recall back to the Hawaii meeting, Anne Barrett, the Deputy Director for Management and Budget, gave us a rundown on the fiscal year '11 budget request from NOAA.

And we talked about well, you know, where can we find more clear and simplified language than going through the NOAA blue book, that 100-page document that

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describes the NOAA request, for the specific issues that were of importance to the committee.

So were we able to try to -- how could we summarize that in a different way. I e-mailed this around to people this morning. I just received it myself by e-mail from the Management and Budget Office.

And this is the first draft of their attempt to try to provide summary level information according to the issues that you had identified.

And it's basically a concatenation of that entire NOAA budget onto one page and categorizes them into these major elements of protected resources, fisheries management, bycatch reduction, catch shares.

So we identified in Hawaii, you know, a number of different topical areas that we wanted to be able to track.

And the second part of it was we wanted to look at in a larger context, not

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just what the FY11 request was, but what the trend was.

And so they've gone back, I think in this case, to 2008. We could go back further years, but the idea is to look at the trend over time. Are we on a trajectory that the committee feels is relevant and important?

So their attempt to generate a table looked at a longer time series of information, these major categories, protected resources.

And then within that first indent if you, it's impossible to read on the screen, at least for me, but if you were able to bring it up by e-mail you'll see that within that heading there are sort of major elements within. And behind this one-page document there's additional description of what those different lines are.

So once we establish what the major categories are that you want to track, are these the important sub-elements, you

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know, beneath them that will populate for everybody's, you know, continued knowledge about what's contained in that line item and sub-line item, what the components are.

And then we can map over time what the requests are as the House and Senate mark up a bill for the upcoming fiscal year. We'd have additional columns and we'd be posting this as a document on the MAFAC website.

So when the House mark hits, you'd be able to see what their action was, the Senate mark, the conference mark. And at any point in time that you want to refer to what the statuses of important activities to the committee are, you could use this as a reference document.

So this is a working draft in progress. I see the MRIP, the Marine Recreational Improvement Program, is not called out as a separate element. That's one thing I picked up on this morning in reviewing this.

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But it does contain major elements, like social and economic data collection as a subcategory was important to the group.

They expand stock assessment line.

It includes a number of different activities that go into supporting stock assessments. You can see the trend, what happened in the last three or four years, and what the trajectory is.

So my point -- and the last part is it then totals up. I mean, we have all these other, the categories of congressional earmarks, and at the bottom line it adds up to the total NMFS request.

So you can see as a fraction -- that's what we talked about in Hawaii, well, in abstract, you know, \$50,000,000, what does that mean? It's \$50,000,000 out of what? And we're spending \$150,000,000 on something else.

So we try to provide that relative to the total amount of budget. You can see

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what the fraction is being spent on observers, or enforcement, or habitat restoration conservation.

If you want to develop this as a spreadsheet where you can actually do percents of that, we can do that as well.

I think this, for now, is just a PDF file we e-mailed out for your initial feedback and review.

Is this getting to what we were talking about of having something that's a little bit more digestible, and recognizing that the rows in this table would be backed up by a narrative to make sure that everybody understands what that line means.

And it's reducing hundreds of pages of the Department of Commerce budget in the NOAA blue book sort of onto a one-page handy sheet that might be useful for you in the long term.

So this is our first shot. I think it'll take several rounds of discussion

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to get some feedback and embellish it, lengthen it, add to it, subtract from it. And that's where I'd like to get some discussion on.

CHAIR BILLY: Okay. Remember that, I think it was a cereal ad where the older brother gives the cereal to the younger one, Mikey, he likes it.

I think this is -- you're on the right track from my perspective. Other comments?

MR. ALEXANDER: Is it appropriate to ask just, like, budget line questions now, or are you not the one to ask that to, Mark? I'm just kind of looking in the silver, under the observer thing.

MR. HOLLIDAY: I probably -- I could give you an answer.

MR. ALEXANDER: Yes.

MR. HOLLIDAY: It may not be the right answer.

MR. ALEXANDER: But I could ask a

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question anyway --

MR. HOLLIDAY: But we could get the definitive answer for you, certainly, yes.

MR. ALEXANDER: Well, I noticed, like, the '11, in 2011 -- now I'm assuming that 3,000 is 3,000,000, right? Because your entire budget is 992,000,000?

MR. HOLLIDAY: Where are you -- I'm just --

MS. McCARTY: He's under catch shares.

MR. ALEXANDER: I'm under catch shares, I'm sorry.

MS. McCARTY: 2011, last row.

MR. ALEXANDER: The last row.

MR. HOLLIDAY: Right. Okay.

MR. ALEXANDER: So you've got that listed at \$3,000,000?

MR. HOLLIDAY: Three million, right, 3,000,000 for observers associated with --

MR. ALEXANDER: Catch shares.

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MR. HOLLIDAY: Yes, go ahead.

MR. ALEXANDER: Okay. Now, the estimates for handling, paying for observers, in New England only, on catch shares is four to five million dollars in the ground fishery.

So does the other money come out of -- where does the rest of that money come from?

MR. HOLLIDAY: Well, the national catch share program new, in that new line item, that \$54,000,000 --

MR. ALEXANDER: Okay.

MR. HOLLIDAY: -- contains monies that are funding observer programs in New England --

MR. ALEXANDER: Yes.

MR. HOLLIDAY: -- and the Pacific groundfish program, and the red snapper, to the grouper, red grouper IFQ program in the Gulf of Mexico. So within that there's a further breakdown --

MR. ALEXANDER: Okay.

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MR. HOLLIDAY: -- and so we chose to concatenate information, you know, to a certain level.

MR. ALEXANDER: Okay.

MR. HOLLIDAY: So for each one of these elements, one could conceivably drill down to a further level of detail.

MR. ALEXANDER: Okay. That's -- I kind of thought it must be involved in that bigger number up top. But, you know, it just kind of said observers, 3,000,000, and I was like --

MR. HOLLIDAY: Right. The reason -- part of this, in that specific case for your question, it was, it's shown as broken out because in that one year we had an additional, in a sense, earmark or dedicated funds of additional \$3,000,000 for that purpose.

So to provide that, where did that money come from, that's why I chose up as that \$3,000,000, it was for traceability.

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MR. ALEXANDER: Okay. I think it looks good. I mean, it's fairly simple to read, I think.

CHAIR BILLY: Tony?

MR. CHATWIN: Yes. Thank you, Mr. Chairman. I like the format on this.

I actually have a question that is back to the supplemental if I could just ask that quickly. And I'm sorry I didn't get it in time. But there it states for, there's money there for fishery disasters in the Gulf that are not covered by BP.

How is that -- what are the things that are covered and what are the things that are not covered by BP.

MR. SCHWAAB: So I spoke a little to this yesterday. Actually the proposal in the budget, both in the President's supplemental as well as the Shelby addition, predate, you know, the 20 billion escrow fund.

So part of what we have been conversing with the states and some of the

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industry leadership about is how some, you know, comparatively modest federal appropriation be utilized to, you know, to fill gaps, if you will, in what might be available through BP.

And there are a number of ideas that are being contemplated. I'll give you as one example the prospect that perhaps what fishermen and other industry participants require most is some assistance in getting their paperwork early, or paperwork together, in order, and making an effective claim to BP.

So that's one of the things that we've actually talked about is can we use some of that money to essentially provide that, through the states, provide that assistance.

There are other things that we've talked about like, you know, we were just talking about a moment ago over here on the side like marketing assistance and certification of, you know, safe seafood down the road, that sort of thing.

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MR. CHATWIN: Okay. Great, thank you.

CHAIR BILLY: Okay. Yes, Dave?

MR. WALLACE: You know I thought that this single-page document was actually very helpful because, you know, it, I thought it was easily understandable, gave the comparisons that a typical budget won't give you, you know, back a number of years, and so you can see either the growth or the reduction in various and sundry categories.

And really what it does is give you an indication of what is, which of the administration, all be that Congress has not gone in and added their goodies to it, and that will change it to some extent. But I find it very helpful. Thank you.

MR. HOLLIDAY: Mr. Chairman?

CHAIR BILLY: Yes, please.

MR. HOLLIDAY: To your point, Dave, you know, we, that's what the line and some of the subcategories call congressionally

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directed projects. That's a concatenation of all of the congressional earmarks under one line.

And oftentimes it's confusing to people to see these, you know, from 500,000 to 2,4,7 million dollar congressional add-ons, and are those, what are they doing and were they even asked for by the administration.

So we, you can still get detail on that, but we concatenated them into this one row to focus on what that core investment has been in fisheries management or protected resources over time. Not that the add-ons are unimportant, it's just that for clarity purposes, we've collapsed that.

CHAIR BILLY: Okay. Yes, Bill?

MR. DEWEY: I almost hate to ask and show my ignorance here, but I'm not sure I understand the program change column and what that change is from. Is it -- it doesn't appear to be from the FY10 enacted.

MR. JONER: In some cases they add

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that, for others there's no mark.

MR. DEWEY: Yes.

MR. HOLLIDAY: Well, the intent is to show what the delta is from the prior year enacts.

But if the map is not supporting that conclusion, then I have to ask Gary and staff and get back to you. We can find out and clarify that tomorrow morning. But the intent is to show what the delta is from that prior year, what the up or down would be.

MR. DEWEY: I was trying to figure out, maybe it was delta from --

MS. LOVETT: I think it's from the President's request.

MR. DEWEY: President's request, yes. That's sort of what I was thinking.

MS. LOVETT: '10 does not show, but we can tell.

MR. JONER: That makes sense.

MS. LOVETT: Because what gets enacted would not show on these ups and downs,

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not what was enacted.

MR. DEWEY: That's what I was thinking but that column wasn't showing for --

MS. LOVETT: Yes, it's not showing for the `10 year request.

CHAIR BILLY: Any other questions --

MR. DEWEY: I don't know that it would need to be shown, just if we knew that.

MS. LOVETT: Yes. No, I'm going, I'm writing that down in a note to myself.

CHAIR BILLY: Okay. Anything else, Mark?

MR. HOLLIDAY: Well, I would just say as you continue to look at it, and have some time, and you have areas and questions, I think this is a work in progress, and we'd be glad to continue to modify it to meet your needs.

MR. DEWEY: So as we -- this is great. I really appreciate the direction you've gone in getting it on one page.

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Clearly each of us has categories within this that we have more interest in than others. And if we want to drill down, what's the best way to do it? If we want to try to get more information specific to --

MR. HOLLIDAY: On a recurring basis or on a permanent, you know, on a one-time or permanent?

MR. DEWEY: Probably on a one-time. You know, just as we see this and we're analyzing this, we have questions.

You know, obviously for me, I'm interested in the aquaculture budget and trying to understand more of a breakdown of --

MR. HOLLIDAY: Right. And that's where Gary's staff would, you know, they'd have the drill down capability.

Conceivably we could make this interactive and you could press a button on a website and then you could see how these things roll up. I think we would sort of do that as a second stay. Once we stabilize what

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it is that we're looking at, we may make that capability available.

But for the time being, I think the best way would be, I'd like to know more about, you know, salmon management activities, and we'd put you in contact with the budget staff person and we could get that detail put out.

I think Randy had a -- Fisher.

CHAIR BILLY: Okay. Randy?

MR. RANDY FISHER: Well, I basically asked -- I mean, there is a, I've seen a drill down from this that he used to do a lot of. And I'm assuming it exists somewhere, right?

MR. HOLLIDAY: Yes, this is just another product of the larger database of tracking at a very detailed level. So we tried to roll it up to something that met the needs.

MS. LOVETT: Which -- and that was provided at the last meeting. We've had the

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full blue book. So I don't think the numbers have changed from that, which is still on the meeting page from before.

CHAIR BILLY: Yes, well, that was long ago. Any other comments or questions?

MS. McCARTY: Mr. Chairman?

CHAIR BILLY: Yes.

MS. McCARTY: At the subcommittee meeting tomorrow we are going to discuss whether this works for us and how it might be improved.

CHAIR BILLY: Sure.

MS. McCARTY: Right?

MR. HOLLIDAY: Yes.

MS. McCARTY: And make recommendations --

MR. HOLLIDAY: Yes.

MS. McCARTY: -- on that. Are we also going to talk about how we might affect the next budget cycle? Isn't that one of the things that we talked about in Hawaii? Like the FY12, is that --

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MR. HOLLIDAY: Right.

MS. McCARTY: Am I remembering that right?

MR. HOLLIDAY: No, you're absolutely correct. We did talk about where the continuing side -- we're dealing with three budgets at any given point in time, where in that cycle the cannon should make that kind of its greatest impact on. And it varies depending on whether it's FY11, FY12, or FY13, so.

MS. McCARTY: Roger.

MR. HOLLIDAY: But we can discuss that some more in the context of -- this was a tool --

MS. McCARTY: Right. This is great.

MR. HOLLIDAY: -- and we don't have an FY12 column, I mean, NOAA's budget for FY12 is under consideration and has not been approved, and so it's not available to MAFAC at this point.

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MS. McCARTY: Right.

MR. HOLLIDAY: But there are opportunities to, for FY12 for planning purpose and FY13, to get priorities into the system that would influence what NOAA sends forward.

And so then we do this awkward -- we hear what your input is, we try to get it into the system, but we can't tell you whether it's there or not until the President releases the budget.

MS. McCARTY: Right.

MR. HOLLIDAY: And I think the, what we were trying to do based on our meeting at Hawaii was develop this calendar that shows, you know, overlays where we usually meet in the spring and the fall, and put these cycles together on the, for fiscal year, fiscal year plus one, fiscal year plus two --

MS. McCARTY: Right.

MR. HOLLIDAY: -- and what those opportunities were, and how MAFAC could play

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a greater or more effective role in understanding that process and contributing to the budget submissions of NOAA.

MS. McCARTY: Okay. Good. So people who are going to be part of that subcommittee should bring those thoughts for FY12 and even FY13, I guess.

MR. HOLLIDAY: That's correct.

MS. McCARTY: Yes.

MR. HOLLIDAY: Yes, FY12 is pretty much, in terms of what NOAA's positioning is on FY12, that door is kind of closing.

And so the next opportunity would be for MAFAC to react to the President's release of that FY12 budget in this January of 2011.

The planning part for FY13, you know, broad ideas and themes as Paul Doremus was talking about in terms of next generation strategic plan, these new directions for NOAA, this is the time to begin, do we support those ideas, are there things in 2020 that we want

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to call out, are there associated initiatives with major policies for aquaculture or catch shares or marine spatial planning that we want to get in a queue for consideration for FY13.

This interval now would be the best time to be sharpening our thoughts about that to provide MAFAC's perspective to NOAA for consideration.

MS. McCARTY: And then, FY12 you said the door was closing? Is it actually closed?

MR. HOLLIDAY: Well, I think in terms of influencing what's going forward to the department at this point, yes, I think the window of opportunity's closed.

MS. McCARTY: Okay. I just wanted to know where we were headed in the morning, what we should concentrate on. Not FY12.

MR. HOLLIDAY: Now, that's not to say you can't talk as individuals when you talk to Congress and legislators about important priorities.

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MS. McCARTY: Oh, yes.

MR. HOLLIDAY: I mean, FY12 is still on the table clearly.

MS. McCARTY: Of course. Right.

MR. HOLLIDAY: But in terms of influencing what NOAA's now trying to sell to the Department of Commerce, I think their strategy is pretty well set, and energy spent on trying to influence that would not be time well spent for the committee.

MS. McCARTY: Not here, anyway, yes.

MR. HOLLIDAY: Yes, as the committee.

MS. McCARTY: Got you. Thank you, that helps. Thank you.

CHAIR BILLY: Okay? All right. We have now an opportunity for public comment. Anyone? Please introduce yourself.

MS. McCARTY: Maybe come up to the table?

CHAIR BILLY: Yes, maybe come up

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to the table?

MR. VINSEL: Hello, good afternoon, MAFAC members. My name is Mark Vinsel and my paid job is as executive director of the United Fishermen of Alaska.

And I'd just like to note that we are an umbrella association of 37 member organizations, and we have a pretty successful track record, in the last decade and farther back, with some major accomplishments that have helped commercial fishermen throughout the country.

Country of origin labeling was particularly one, getting commercial fishermen access to USDA trade adjustment assistance was also very significant.

And we've also passed over 50 bills, or worked to pass over 50, in the Alaska State Legislature that really made a difference in coming from salmon crisis in 2001 to the health and vibrancy we see in our markets and fisheries right now.

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And actually the crisis, I should say, was in the market, it wasn't in the ecosystem.

But I think the key to all that, at UFA we don't have to discuss allocations. Among any two member groups there's going to be some allocation issues that come up all the time.

And pretty much at our deliberations, when something comes up and somebody says I think that's allocation of your fishery against mine, that's the end of that topic on our agenda.

And that's how we get a lot done with 41 board members, because it's four at-large members voted by the individual.

So that's how we get a lot done. We don't bog ourselves down in intractable, unsolvable conversations that are best left to the Board of Fisheries process and the North Pacific Council process.

I'm here pretty much on my own

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behalf, although I'm authorized by our president, Arni, to, you know, say that I'm here on behalf of UFA.

But I'm really, I'm a lifelong sport fisherman. My parents didn't teach me how to fish, I did it because it was really my favorite recreation from a very young age.

And as we moved to New Hampshire, I got into fly fishing at age 12. I'd been fishing with a cane pole in Virginia creeks since before then.

I've been an avid fly fisherman, and that's my number one recreation for my whole adult life. And I think I have some perspective here that you might not often hear.

I personally believe that here, especially in Juneau, my access to recreational fisheries depends on the health of our commercial fisheries.

Let me just shift, on that segue, to a comment on aquaculture. United Fishermen

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of Alaska, one of our strongest principles is that aquaculture be done with the first and foremost priority for wild fish and their habitats and ecosystems.

How that translates right here on the ground in Juneau with our DIPAC, Douglas Island Pink and Chum, they don't do pinks anymore, but that's the name of the hatchery, and we have a very limited road system of which we really only have a couple streams that are worth walking up and down and fly fishing, the recreation that I love and pretty much depend on for my work.

If we don't have hatchery fish for our large number of consumptive users, many of whom are here from a traditional subsistence background, and I would never deny them that right to get them that fish, but our local salmon resource can nowhere provide that for the 30,000 people who live here on a road system that really stretches no more than about 45 miles from end to end with just a

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couple little natural systems.

So the priority for wild catch fisheries in aquaculture I think is a really important policy to stick to, and I appreciated seeing that on the top ten.

I also think that in our aquaculture, our salmon finfish aquaculture enhancement programs, we have a common property component, providing fish to me as a sport fisherman and other people in the community.

That's what provides local buy-in for that hatchery and local support. It's not just one user group. And I think that's also key in moving forward aquaculture.

Always be considering the common property opportunities, which there are across, in many different kinds of aquaculture for a component in that, it'll help get support.

I wanted to just briefly, I didn't want to jump in, my thoughts really weren't

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that organized when you asked for other comments when we were talking about sport and even allocations.

As we look to address socioeconomic values, Tom, my friend Tom mentioned the difficulties with comparing the economic values of sport and commercial.

And I think we all understand that we see a lot of arguments that I would consider, you know, measuring a piece of the pie of commercial fisheries, usually they use the ex-vessel value, with what I would consider the whole dinner, dessert, main course, and everything, the recreational fisheries.

The state of Alaska study even included -- I don't know if they counted the house I own, but I moved here partially because of the sport fishing opportunity. My car was primarily used for sport fishing because it's closer to my office, all these different things. But that's not proper.

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And they compare those numbers against purely ex-vessel value. But really the socioeconomic value, there'll be difficulties in measuring and comparing.

Social values, in my opinion, are quite simpler. Recreational fisheries to me is a primary component of a healthy lifestyle.

I need that recreation to basically do stressful work.

Social value to me, for commercial fishing, is also in health. I need to eat a large proportion of my protein in finfish.

And I will continue to do this because when I did it in a more or less controlled way, this is how I reduced my cholesterol and raised my HDL when these were very important for me to do for my health.

And so for recreational fisheries, I depend on access to a reasonable opportunity to catch a fish. For my health, I depend on eating fish on a very regular basis.

So I think on a social basis,

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unless, I don't see -- there's no way you're going to delve down into the healthcare costs of fish consumption, but the FDA, USDA, they're recommending people eat more fish.

And it's got to come from somewhere, especially if you aren't in favor of coming increasingly it from exports.

So I think you should really be protecting the public's access to the public fishing resource, which, in my opinion, is delivered primarily through the commercial fisheries.

When I catch a fish, recreational fishing, that fish is then mine from then on.

But when a commercial fisherman catches it, that's just the economic mechanism by which it's delivered back to the public at a restaurant, at a supermarket.

So I really, I also caution against -- in my opinion, I think people should pretty much be automatically discredited if their solution to their

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particular problem involves eliminating a user group that was there first.

And here in Alaska we have situations where we have some rapidly growing population. Everybody who moves to Alaska expects to be able to do what we see in the pictures, lots of fish like people have caught, and that's what they expect.

But the habitat can't provide that for unending, increasing numbers. And in this case they are looking to eliminate -- well, I shouldn't say they, not everybody, but there are some organizations whose leadership has quite publically advocated for the elimination of commercial fisheries in Cook Inlet, which by far have been there longer than the population growth of that area.

And I just think that that should be an automatic thank you for your testimony, see you later, because I don't think that's the right way for federal public policy to be moved forward.

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I also always want to make the point that these allocation battles interfere with conservation.

And the history of salmon, throughout its range, is the elimination through many economic interests that can help keep allocation battles going while the fish, the habitat, and nature are just sold down the river.

So I really guard against these allocation battles wasting the time of a public forum that's really there to protect the fish.

Thank you. And thank you for the unlimited time. I saw that at the time that I started speaking there wasn't anybody in the public I thought was going to speak, but now perhaps there is. So thank you for your time.

CHAIR BILLY: Anyone else? No? Okay. Thanks. All right, now we're going to break into the -- oh, questions. Sorry. Please. You have the floor.

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MR. MARTIN FISHER: Thank you, Mr. Chairman. I just want to say I appreciate your presentation, Mark. Thank you.

CHAIR BILLY: Yes. Randy?

MR. CATES: Mark, I've sat next to you and testified in a Senate hearing. You said a couple things that caught my attention.

One is I think you're the first person that I've ever heard from Alaska even mention aquaculture.

MR. JONER: Oh, I hear it mentioned.

(Laughter.)

MR. CATES: I mean, in the context that it's an important part for Alaska fisheries. And I think that's, I think it's very true, something that we have recognized and I've actually envied and looked at Hawaii should be doing the same thing.

The other thing I would comment on is your description of how important fisheries is for your human health side is exactly,

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almost word for word, what I talk about in Hawaii and other places of why we need aquaculture.

And I think of that person that's in the middle of the country, doesn't have access to maybe the fisheries that you have access to, or even I have access to in Hawaii, and how important that is.

And where I'm from there's another aspect to it, and that's a cultural aspect. I often talk about my wife's family and how important fish is and how important local fish is, which it's really not there any longer.

So I would use the same arguments you put forward, I do use the same arguments, in support of aquaculture. But I do appreciate your comments and I think, like I say, it's the first time I've heard someone from Alaska talk about that.

CHAIR BILLY: Bill?

MR. DEWEY: I just wanted to acknowledge as well that I heard you refer

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positively about aquaculture, and specifically the way you referred to it was the common property aquaculture, I believe that was the term you used.

And I think that's -- you suggested that's a good way, when there's opportunities, that's a good way to get public acceptance of aquaculture. And I couldn't agree more.

We've done that very successfully with shellfish in the Puget Sound. And we've gotten community shellfish gardens started down there in areas where we had degraded water quality, to try to get the public engaged on why they need to work on cleaning up the water, reconnect them to the resource.

And had great success with that.

So it's been an opportunity both to educate on water quality, but on aquaculture as well.

So kind of a different effort than what happens here in southeast Alaska with the

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salmon but a similar result.

CHAIR BILLY: Heather?

MS. McCARTY: I don't know whether everybody knows what kind of aquaculture we have in Alaska, I don't know if you're all familiar with it.

The system is a private, non-profit hatchery system. They don't make money from -- they make enough money to run and that's it, and then sometimes not even that much.

They are formed by groups of permit holders in each one of the regions. There's one in northern southeast, southern southeast, Cook Inlet, Kodiak, Prince William Sound.

The one in Prince William Sound is the largest salmon hatchery system in North America. It has, I think, now five or six hatcheries.

There's also a small one on the Copper River.

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And they're formed and owned basically by the permit holders of that region, the salmon permit holders. And by, they're run by those folks. There's a board that runs each one of these organizations. They have hired folks, of course, biologists and so on.

And then for each harvest there's a certain percentage that's taken out by agreement. It's called cost recovery. And that cost recovery goes back to the hatchery organization to run the hatchery.

The rest of it is open for commercial fisheries, and personal use, and subsistence fisheries, and recreational fisheries.

And it's allocated amongst those fisheries by the folks who run the hatcheries, in conjunction with the Department of Fish and Game, in sort of a planning team approach in every region.

So it's not for-profit, it's

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private and non-profit. And it's been working pretty well.

Now you've heard two people from Alaska talk about aquaculture.

CHAIR BILLY: Vince?

MR. O'SHEA: I just -- Heather, maybe you can remind me, what's the connection and how do the recreational fishery pays for the hatcheries.

MS. McCARTY: The -- everybody, every user group essentially pays for it. Of course, from off the top of each return, there's a cost recovery percentage taken. So that basically comes out of everybody's share.

It's like if you were going to divide the pie, first you take a 20 percent cut off the top and that goes to support the hatchery system, and the rest of the pie --

MR. O'SHEA: -- but the fishermen pay a landing tax, don't they? In support of the hatchery.

MS. McCARTY: Actually, in most

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cases there is a tax paid by the commercial fishermen, yes, it is self-assessed --

MS. FOY: By the commercial fisherman, but by no other user.

MS. McCARTY: That's true. That's true.

MR. O'SHEA: Thanks.

MS. McCARTY: It's actually relatively small compared to the cost recovery component of most of the hatchery organizations that I know of.

MR. MARTIN FISHER: So no money of the salmon stamp goes to the hatchery?

MS. McCARTY: I don't know. Maybe it does.

MR. VINSEL: There is some Dingell-Johnson money and other funding that help support these for production. For -- here at DIPAC, it's in the chinook and coho are supported by some --

MS. McCARTY: Dingell-Johnson funds.

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MR. VINSEL: -- supportive federal funds.

MS. McCARTY: Yes.

MR. VINSEL: But I think ultimately the hatchery wouldn't exist without the success of the commercial fishing industry on it. But, yes, there is some important funding to those four fish.

MR. BROWN: Many of the hatcheries get fairly large government subsidies as well.

I think most of them do, couple of subsidies.

They're not only not-for-profit but they've been operating at a loss. But it's, you know, everyone benefits from the fish, so everyone is paying for it in one way or the other.

But the commercial landing tax is the most, commercial fishermen landing tax, is the most direct payment. But they get payments through other sources, too.

MS. McCARTY: They take out loans from the Division of Investments, which is

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part of the state Department of Revenue, and they're supposed to pay them back.

CHAIR BILLY: Yes. Randy?

MR. CATES: I just want to share an example with you what has occurred in Hawaii. We had a facility, state-run, that was a stock enhancement. They were getting, they were running on about \$4,000,000 a year.

The most fingerlings they ever released in the environment was 10,000 moi in one year.

When I do my runs, in one year, I had available a million fry to give to the state of Hawaii to release. We know for a fact from studies 15 percent of tagged fish got returned.

It was denied me giving the state, by the state, because they received Dingell-Johnson funds and didn't want to threaten those funds.

I bring that up as an example of how aquaculture can support commercial

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fisheries if they just open their eyes a little bit and get away from the money side of it, the competing grants and such.

Since that time that facility has shutdown because of loss of grant. But that is an example of teamwork, and back to what we were talking earlier about being in sync with production and working together.

MS. McCARTY: Mr. Chairman, one thing I should add is that the private non-profit hatchery system in Alaska was put in place by a group of state biologists and private individuals and fishermen themselves, who fought a long battle in Juneau to get the legislation that created the framework for these hatchery systems.

They did it because they wanted it and they needed it for supplemental fisheries.

They needed the fish.

And so they did it themselves and it took them a long time, years and years and years.

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MS. FOY: Tom, question for Heather, just a quick one. Do you know whether or not these same hatchery systems are producing the inland lake trap that they're stuck in?

MS. McCARTY: There are state hatcheries that do that, right? You probably know more about that, Bill.

MR. DEWEY: Yes, there are.

MS. FOY: But not the same aquacultures association.

MR. DEWEY: They're putting a lot of, I think, triploid rainbow trout and I think there are other fish, but I know they're doing triploid rainbow trout in the interior lakes around Anchorage and Fairbanks.

CHAIR BILLY: Martin?

MR. MARTIN FISHER: Mark, what's the percentage of the ex-vessel price for the fish that the commercial sector pays, the cost recovery. Do you know?

MR. VINSEL: I don't know across

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the board, and it's not to all fisheries --

MR. MARTIN FISHER: Well, salmon,
I mean.

MS. McCARTY: Mr. Chairman?

CHAIR BILLY: Yes.

MS. McCARTY: It varies by region.
And the aquaculture associations themselves
set that percentage, in the cost recovery.

MR. MARTIN FISHER: Do you have
any idea what it is? Is it three, five, ten?

MS. McCARTY: Well, when I worked
with the aquaculture system in Prince William
Sound I think it was 30 percent cost recovery.

MR. MARTIN FISHER: Thirty?

MS. McCARTY: Yes. Cost recovery,
yes. Yes, I don't know what it is now but we
can find out.

MR. MARTIN FISHER: We can find
out.

MS. McCARTY: I just don't know
what it is now.

MR. VINSEL: It varies with the

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hatcheries.

MR. MARTIN FISHER: Yes, that's very --

MS. FOY: Wait a second, Heather. Thirty percent of the --

MR. MARTIN FISHER: The ex-vessel price?

MS. McCARTY: Well, 30 percent of the revenue -- well, thirty percent of the returning fish. And the fish that --

MS. FOY: Okay. But not necessarily the ones that the fishermen catch.

MS. McCARTY: No.

MS. FOY: Are you talking about the cost recovery system.

MR. MARTIN FISHER: Oh. That's what I'm trying to get to.

MS. McCARTY: The cost recovery system is a system where, say it's 30 percent, 30 percent of the fish that come back to each individual hatchery are caught by the hatchery system themselves with boats that they hire.

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And they sell those fish into the same marketplace that the fishermen are selling the fish into. They sell them to the local canneries and processing plants.

MR. MARTIN FISHER: So as a salmon fisherman, you're not taking off a percentage in my gross profit.

MS. McCARTY: Well, in a sense you are.

MR. MARTIN FISHER: In a sense, yes.

MS. McCARTY: But it's different, yes.

MR. MARTIN FISHER: But it's not direct.

MS. McCARTY: Cash.

MR. MARTIN FISHER: Got it.

CHAIR BILLY: Okay. All right. Where are the committees meeting now, Mark?

MR. HOLLIDAY: The Recreational Subcommittee's meeting in the room behind us and --

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MR. MARTIN FISHER: Okay. More public testimony that wants to --

MR. BROWN: I just want to make one comment.

CHAIR BILLY: Okay.

MR. BROWN: On the cost recovery, it varies by hatchery. And we have one hatchery in the state, and I won't name it, but it's -- anyway, for three years now, all of the returning fish were caught with cost recovery, none were available for commercial fishing.

Because that hatchery has had some tough times, they're getting subsidies but they're not getting any returns back. Now, that's an exception. Okay?

But the reason I say that is cost recovery, it varies by hatchery. And some of the hatcheries that -- so many fish return, they don't have to catch a large portion of them to cover the cost.

At least one, for three years now,

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every fish that returns to the hatchery is caught by the hatchery and sold to support the hatchery for next year.

CHAIR BILLY: Okay. Rec Fish next door. And Protected Resources in here. Why don't you take about a five minute break and then.

(Whereupon, the foregoing matter went off the record at 3:03 p.m. and resumed at 3:21 p.m.)

MS. FOY: I'd like to call to order the subcommittee meeting for protected resources. If everybody's who going to join would gather somewhat around the table.

Jim, I don't mind if you bring your food in here. No running away.

MR. LECKY: No, I was just putting my dishes away.

MS. FOY: Okay. So the tasks for this meeting are responses to Jim Lecky's presentation earlier in the day. We're not going to go over Deepwater Horizon issues,

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that's going to be saved for a report back to the full committee tomorrow.

So what I'd like to do is to go back through, if you would, some of the subcommittee recommendations that were made not only at the Hawaii meeting but prior to the Hawaii meeting.

And I think Jim made a very good response to us, but I want to make sure that I'm not the only one that's happy with this. The subcommittee recommendations came from all of us, so we've got access to an expert there.

Keep in mind that some of the things that we're asking him to do are very difficult.

So I want you to, Jim, let us know what it is that we can do to help you. So if it's a limitation on, because of staff time or whatever, tell us that and we will request as appropriate.

So to get rolling -- if I could find it. Yes, sir?

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MR. CHATWIN: I just wanted to, if you could add the new recommendations, is that something that we could project?

Sorry, I didn't mean to --

MS. FOY: No, no, no, that's okay. So while I'm getting that set up.

MS. LOVETT: Here, should I just pass you around a speaker list?

MS. FOY: Sure. Why don't I toss Jim to the wolves, so to speak.

MR. RIZZARDI: Could she just e-mail it to you?

MS. LOVETT: We're going to e-mail it.

MR. CHATWIN: Yes. You could e-mail it if you wanted to.

MS. LOVETT: Either way.

MR. CHATWIN: You can just pass it over.

MS. FOY: Did anybody have any questions? Do you want to start rolling with yours or do you want --

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MR. RIZZARDI: Well, do you want to go back to previous stuff?

MS. FOY: Why don't we do that in a minute.

MR. RIZZARDI: Okay.

MS. FOY: That could be a very good close-up for discussion.

MR. RIZZARDI: All right. So based on the conversation that we've had as a group with Jim, I identified three topics. I started with an opening statement and then -- are you forwarding it to Heidi?

MS. FOY: Oh, which, yours?

MR. RIZZARDI: Yes. I said, MAFAC recognizes Endangered Species Act implementation as one of the National Marine Fisheries Service's most important obligations. The rigid time frames in the ESA, the process for third-party petitions, the limited agency staffing and the scientific complexity of the issues, can, however, at times inhibit successful implementation of the

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statute.

Accordingly, MAFAC offers the following findings and recommendations. Number one, ESA implementation, especially with respect to the effects of climate and habitat changes, pesticides, ocean energy development, and ocean noise on listed species requires analysis of complex science.

NMFS should seek additional staffing for the Office of Protected Resources to enable the agency to better respond to the increase in demands of ESA implementation.

Any disagreement on?

MS. FOY: I think we need to see that in writing.

MR. RIZZARDI: Yes. I was just looking for any concerns in principle.

The second point that came out in discussion was NMFS should give increased attention to celebrating the successes of the ESA, in part by completing the process of downlisting or delisting species where

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appropriate.

In particular, NMFS should evaluate the existing science on the sperm whale and complete its determination on whether the Hawaiian populations of sea turtles can constitute distinct population segments, to determine whether these species can be downlisted or delisted.

MR. LECKY: So I guess I, I didn't talk about humpback whales although it's tentative -- it's pressing probably because he didn't ask me the question.

MR. RIZZARDI: Okay.

MR. LECKY: We are embarking on a little self-imposed analysis of humpback whales.

We've -- over the last five years, completed several synoptic studies of humpback whales in both the Atlantic and the Pacific and think that there's, you know, information on population structure that we can, should consider, to lay out whether there are

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distinct population segments of humpback whales, and we know that there are, and whether some of those ought to be delisted.

Because they clearly are in Hawaii, or not in Hawaii, North Pacific in general, they're doing pretty well. And in every place they're doing well, in Hawaii, off southern California, and off Japan.

We're, you know, just embarking on that process now.

MR. RIZZARDI: Tony, did you have -- no. Okay. So I should add humpback whales into the concept --

MR. LECKY: Yes.

MR. RIZZARDI: -- as to one of the ones that potentially successes, right, absolutely. Third one is --

MR. CATES: Question.

MR. RIZZARDI: Yes?

MR. CATES: Just for clarification, what would happen in a humpback whale sanctuary if they were delisted?

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MR. LECKY: Those are two independent things, so, you know, my guess is it would stay there.

MS. FOY: There's a lot of restrictions that are in place just because the critters are marine mammals, not just because they're endangered. So you've got a whole other layer of complexity.

MR. LECKY: Right. So yes, actually in terms of --

MR. CATES: It's just that in Hawaii we have a whole industry selling the idea that they need protection, and go in my boat and look at them because they need protection.

If they're no longer listed, it probably would get, hurt an industry that sells that idea.

MR. LECKY: Well, they'll probably continue to sell that idea --

MR. CATES: Yes, that's right.

MR. CLAMPITT: I've got a

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question. You mentioned distinct population and you said that you have more information about the distinct populations of humpback whales, and so they may be eligible for delisting.

So my question is, let's say you have a healthy, you know, robust population in the Pacific and a not so healthy or robust population in the Atlantic.

And you say -- so if you have, say, this population in the Pacific that aren't threatened and are growing, but yet they're not doing so well in the Atlantic, the ones in the Atlantic could still be under the Endangered Species Act, but the ones in the Pacific wouldn't be, correct? Even though they're both the same species and they can interbreed, is that --

MR. LECKY: Right. So the definition of distinct, well, the definition of species in the Endangered Species Act, yes, I think I have it memorized, is species,

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subspecies, or distinct population segment of vertebrates.

So and a -- we've gone onto define what distinct population segment is in a regulatory context, so we look at genetic information, geographic constraints or restrictions in range, things like that.

So usually ocean basins fall out as at least distinct population segments.

And so you can list a distinct population segment separately under the statute.

So globally listed species, what we're, like the loggerheads, what we're doing is we're going to remove the global listing and replace it with the distinct population segment listing.

MR. CLAMPITT: So I can understand the law then, so this humpback whale population, hypothetically, in the Pacific is doing great and it's robust and the one in the Atlantic isn't, and you remove, you could

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remove the ESA distinction --

MS. FOY: Listing.

MR. CLAMPITT: -- listing on the one in the Pacific and leave it on the one in the Atlantic. And so all the restrictions on interaction with humpbacks in the Pacific would go away, other than the Marine Mammal Protection Act.

MR. LECKY: Which is substantially similar.

MR. CLAMPITT: I understand that.

MR. LECKY: So, yes. But that's right.

MR. CLAMPITT: And so --

MR. LECKY: Maybe a better way to look at it is the rationale for imposing the restrictions would switch from the ESA to the MMPA.

MR. CLAMPITT: Yes, okay. And so then was, like -- deferring that with sperm whales. We had a discussion about sperm whales and we were saying that, I didn't quite

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pick up on at the time, but you were talking about, you know, globally, worldwide, there's a million. So, possibly.

So it is possible that you could delist the -- you know, study at length the Pacific, North Pacific group and say that, okay, this is a healthy population and delist them, and then worry about the rest of the globe later.

MR. LECKY: I think if you knew that it was a distinct population --

MR. CLAMPITT: Yes, well that's a take --

MR. LECKY: And of course then that begs the question, where, how is the rest of it divided up. You might -- and the scientists of course would say you need to figure that all out before you delist anything. I'm not sure that's true, but it's probably how we would approach it.

MR. CLAMPITT: You would approach it by --

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MR. LECKY: By trying to figure out what the distinct population composition was globally.

MR. CLAMPITT: That's quite a trick, right?

MR. LECKY: Yes. And because of the breeding strategy that they employ that I described, it's not intuitive how that might work out.

I mean, we expect the ocean basins to break out separately, but other than that it's intuitive that there's something within the basins that we can separate.

MR. CLAMPITT: Kind of like a tie game. It's kind of like ten of you come into help or extend or not.

MR. CATES: Can I ask a question? It's probably going to be a difficult one to answer. But for the years you've been doing this, how much does politics play into this, into the science?

MR. LECKY: Into the science.

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Gosh.

MS. FOY: Why don't you use a for instance, Jim. Why don't you use my favorite for instance because that will save you some questions later.

MR. LECKY: There are no politics in Steller sea lions.

(Laughter.)

So politics weigh into all of these decisions because people are really concerned and interested in how the Endangered Species Act will affect their economic interests.

But given that, and that may -- and usually it drives us to take a hard look or even second or third looks at some science that we have. And it may drive us to defer a decision until we can actually get some better expert advice, or something like that.

But I am comfortable that we do try and make our decisions based on the best available science. And as I indicated in my

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presentation, we are risk averse when we make ESA decisions.

And so we do try to avoid -- you know, so there's this concept of type one and type two errors. Type one is convicting an innocent man, type two is letting a guilty man go. And we don't want to let the guilty guys go.

We want to make sure that we're going to conserve these species. And if we're making an assumption that an action is not having an adverse effect, we want to be really confident that we're right.

So that's where, what you characterize as the unreasonable decisions, that's why they appear unreasonable. It's sometimes -- you know, we're not looking for the most probable explanation, we're looking for the explanation that ensures the jeopardy.

And the less you know, the less information that's available, the more conservative those points get.

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And so then -- also the less information you know and the more conservative we get, the more political it gets.

So I would say that, yes, there is a lot of political interests, but I think we are pretty good about trying to segregate that from the science and making the best call we can. People might not agree with that, but.

MS. FOY: Perspective is --

MR. CATES: Is that wherein lies the problem of delisting?

MR. LECKY: So I think the problem with delisting is two things. There's -- so you've got a conservation success story and the incentive to spend resources to take it off the list is low.

There's more incentive to put things on the list because you want to conserve them. So that's one issue.

There's always somebody in the public that will be opposed to taking something off the list because they perceive

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that it's going to go back to the way it was.

And so, for instance, when we took gray whales off the list, everybody was, you know, the enviros were out there trying to convince the public that the next day the Japanese whaling boats would be off the coast of California.

And, you know, clearly that wasn't the case. There's no way it could happen under the MMPA and other provisions, even the IWC would've precluded it.

So there's all kinds of misinformation that gets put forth by some NGO communities that have a vested interest in having a species on the list. And that's kind of an impediment to going forward.

But I think from a -- I guess that's something we just have to deal with the process.

In terms of probably the biggest hurdle, it's really the resources question and the fact that you don't get a whole lot of

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conservation benefit for taking it off the list.

MR. CATES: The real question then is how to improve that situation. Either MAFAC has to make a suggestion or something from you.

I mean, I have one, it's just limit the number of species that can be on the ESA list. Period. You'd certainly get some off because you'd have to put some on.

(Laughter.)

MR. LECKY: Yes.

MR. RIZZARDI: Is that a question or?

MR. LECKY: I'm not sure how you'd do that without changing the statute.

MR. RIZZARDI: Yes, you'd have to change the statute. It meets criteria or it doesn't meet criteria. It's a simple, scientific question. I mean, not all that simple sometimes.

MR. DEWEY: Keith, I think the

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recommendation you had drafted for the things as this point --

MR. RIZZARDI: Yes, I mean, I think I've captured the essence of it --

MS. FOY: Yes.

MR. RIZZARDI: -- which is that we're encouraging the agency to celebrate the successes. I mean, and that's what our subcommittee has talked about a few times.

It's just -- I understand the political pressures, I think we get it. But on the other hand, science is science and if the species has gotten to a point where it should be delisted, then let's move forward with that, and, you know, and put out the bald eagle kind of statement that says, hey, species is doing better, Endangered Species Act can work. Because, some of the thought in this room is driven by the perception of it's nothing but adding species on all of the time.

So if you can diminish some of the burdens and some of the challenges, then

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you're showing the fairness of the statute and that it really can work.

MR. DEWEY: Well, and from our standpoint, there's a room full of stakeholders that are impacted by unnecessary consultations --

MR. RIZZARDI: Right.

MR. DEWEY: -- and those species should be delisted. You know, we're feeling unnecessary restrictions on our activities, it's unfair, you know, it's hampering economic activity for the country.

MR. RIZZARDI: I agree.

MS. FOY: Jim, how --

MR. CHATWIN: So I just wanted to to --

MS. FOY: Go ahead, go ahead Tony.

MR. CHATWIN: -- speak out here a little bit because we discuss this a lot at NFWF and with our board, and there's a lot of interest in making investments to support the species getting to a stage where it can be

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delisted. And so we've looked into this a lot from an investment perspective.

And the biggest hurdle that I've come across for delisting is that not all the conservation measures are in place to guarantee that it won't slide back.

I'm thinking not only marine species, but in some cases where you need continuous management for it not to slide back, especially with, in the states, where the states are responsible for the management and they might not have the funding to --

MR. LECKY: Well, so --

MR. CHATWIN: And it depends on what species you're talking about.

MR. LECKY: Yes, it does. So --

MR. CHATWIN: And so this is a complex issue, not only what size is the population.

MS. FOY: Right.

MR. JONER: So if I understand that, you can have a species that's at near

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carrying capacity, but because somebody believes that it may go back, there's a danger of it declining the population again, you can't take it off the ESA, is that --

MR. CHATWIN: Like, I'm not the expert here, but my understanding is that --

MR. JONER: No, I mean, that's been your experience?

MR. CHATWIN: -- it's not that it's at carrying capacity, but it's at a level where you can start to consider whether or not to delist. And part of considering whether you do move that way is to see if all the conservation measures are in place to ensure that it doesn't go back.

MR. RIZZARDI: When a species gets listed, you're supposed to have a recovery plan.

MR. JONER: Right.

MR. RIZZARDI: The recovery plan is supposed to articulate the criteria for achieving recovery. And when the species gets

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to the point where the science is showing it's meeting those criteria, that's when you're supposed to be making a delisting decision.

And then after you make a delisting decision, there's a period of time where there's post-delisting monitoring to make sure that there's not some sudden crash in the population.

So it is a science driven statute

--

MR. JONER: Yes.

MR. RIZZARDI: -- and there are these criteria that need to be looked at. But I think the point we've all been addressing is what Jim's already acknowledged, which is there's a lot of pressure to put them on, but there's not as much pressure to take them off.

And as a result, it creates this unfair perception of the ESA. And if we can start delisting some species, it will show that the statute can work and can achieve positive results.

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MS. FOY: Well, it's twofold.

MR. JONER: I mean, with marine mammals, aren't some of them deactivated?

MR. LECKY: Yes, yes. So, for example, one of the concerns -- so let me say it this way, when you put a species on the list, usually it's, you know, there are a few of them left, they're blinking out, you don't know a whole lot about them.

You decided they're at risk of extinction and you try and explain how they got there. You look at the five factors. Typically it's inadequate regulation and loss of habitat are the two biggies.

So if it's inadequate regulation was your biggest risk factor for putting something on the list and you dealt with that, and because of the prohibitions under the ESA and it's recovered and you want to delist it, then one of the questions you want to look at in the delisting process is, okay, what is the regulatory mechanism that's going to be there

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when you take the ESA protections away.

And if it's inadequate, then, you know, you might want to do some homework with the local state government just to see if you can't beef that up as part of an insurance policy.

And then as Keith said, or Tony, I don't remember which one of you said it, there is an ongoing obligation after you take the species off the list to monitor its status for at least five years.

MS. FOY: So what you're saying, Jim, if I could get you to clarify for me a minute, is that delisting doesn't necessarily have to go hand in hand with removal and the mitigation measures that brought the population back.

MR. LECKY: You have to, you want to look at are the risks that caused it to be endangered addressed.

And is part of your rationale for taking them off the list is that they're no

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longer threatened because the population has recovered and the risks have been addressed or will be addressed.

MS. FOY: What if you were not able to determine why a population crashed in the first place? Do they --

MR. LECKY: So I think -- so for example, Steller sea lions.

(Laughter.)

MS. FOY: Thank you.

MR. LECKY: We're -- the eastern DPS of Steller sea lions we're pretty confident are in good shape and increasing. And I think we've got good measures to protect them. And there is a recovery plan that has laid out pretty specific recovery criteria that appear to have been met.

So I think there's a case there where we could proceed, we could proceed with that.

MS. FOY: What about the Western stock? I mean, we have a huge body of

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scientific evidence that says that the problem that caused the crash and that is allowing the continual low population is not food restrictions, that they're not nutrient stressed.

But yet we still keep closed areas around all the hollows and their roosts for no-trawl zones. So it gets sticky.

MR. LECKY: So I would contend that that's not a delisting issue. That's a do we have the right framework arranged for --

MS. FOY: It was a downlisting issue.

MR. LECKY: Right. But, I mean, but that particular DPS is still, in parts of the DPS, it's still declining pretty significantly.

MS. FOY: Yes.

MR. LECKY: In other parts it's stable or it's not --

MS. FOY: Overturning that?

MR. LECKY: -- not increasing as

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much as we'd like to see.

MS. FOY: Okay.

MR. LECKY: So we may not fully understand why.

MS. FOY: Right.

MR. LECKY: So you might want to tinker with the conservation measures that we're employing.

MS. FOY: Right.

MR. LECKY: And you might want to do some science and try to figure that out. But that's different from the delisting element, so that's, I think that's more of a conversation recovery strategy.

MS. FOY: Well, hand in hand with that, when you're setting -- in your recovery plan, what level is returning to the normal, historic level?

MR. LECKY: Ahh.

MS. FOY: Because with Stellers, we may have had an abnormally high number --

MR. LECKY: Right. Right.

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MS. FOY: -- and so the return of that would be --

MR. LECKY: So for reasons we talked about relative to climate change, we don't --

MS. FOY: What I'm asking --

MR. LECKY: Yes.

MS. FOY: -- is there a nationwide standard --

MR. LECKY: No, there's none.

MS. FOY: -- that allows for --

MR. LECKY: There's none.

MS. FOY: Okay.

MR. RIZZARDI: There's a narrative standard. There's recovered to the point where the measurers in the Endangered Species Act are no longer necessary.

MR. LECKY: Yes.

MR. RIZZARDI: That's the narrative standard that dictates. What does that mean?

MR. LECKY: So we actually

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struggle with this from the other side, what are the criteria for saying something's endangered.

So if you look at Fish and Wildlife Service, they manage everything from insects to grizzly bears.

We manage everything from abalone to whales. Lots of different life history strategies involved in that, lots of species that live for a year or two, versus species that live for hundreds of years.

And coming up with a specific criterion that defines when one of those is threatened, or endangered, or some magic population level or some probability over specific time, we struggle with that. We really couldn't find one that sort of worked for everything.

And so it really does come down to well, we have good information. Actually what we did discover is that we do make pretty good decisions when we have lots of information.

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And where we don't have lots of information, there really isn't a formula that's going to help us. We really need to rely on professional expertise.

MS. FOY: What kind of guidance does NOAA give to the recovery teams when they're establishing their recovery plans, as far as general overarching guidelines.

MR. LECKY: So the kind of general overarching guidelines is we want populations that are resilient, well-distributed, productive, and have a probability of persisting through time. So that's sort of our general what healthy species looks like thing.

And then in order to get there, what are the risks that are precluding you from getting there, is it water management, is it incidental mortality to some activity, is it habitat constraint or loss.

And then I -- you know, it takes time to identify those things. How do you,

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who should address them and how do they go about doing it and what's a reasonable time frame.

MS. FOY: Is there, like, a formalized set of instructions or anything?

MR. LECKY: Yes, we have, it's interim, but we have guidance on the recovery plan.

MS. FOY: Guidance.

MR. RIZZARDI: And it's available on their --

MS. FOY: It's available. Oh, okay.

MR. RIZZARDI: -- on the NOAA web pages. There are endangered and threatened species recovery planning guidance, version 1.3.

MR. CATES: I have a quick question. I know that you're trying to make recommendations. You touched on it yesterday.

What do you do when you're trying to protect one species and that plan impacts

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another species? That's one question.

And the other is, how much guidance do you give to the regional areas, especially when they start getting some questionable tactics in protecting these species.

For example, to start killing sharks because the worry is there's too many sharks eating monk seals. Or bringing monk seals into, you know, changing the areas that they live in.

There's a lot of things going on that were really starting to play Mother Nature. It doesn't seem like there's much guidance there.

MR. LECKY: Yes, so that -- so monk seals are, I didn't have them on my hot topics list, but they certainly are a hot topic in Hawaii.

We're on the verge of losing not just a species but a whole genus with monk seals.

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As I mentioned, we delisted the Caribbean because they're extinct. Mediterranean's in very, very poor shape. And Hawaii's just on the heels, not very much better than that.

So they're trying all kinds of things to keep that from going extinct.

MR. CATES: And it's starting to cause some conflicts.

MR. LECKY: Yes, yes. Turns out the salvation might be actually encouraging development in the main Hawaiian Islands, so there's going to be lots of conflicts with that as we go forward.

But the species to species conflicts, I think those shouldn't be our first choice because most of these species have evolved where they live and part of their life history strategy is to deal with predation and competition with those species that are there.

If we've done something to sort of

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tip the balance so it doesn't work, and we're confident we understand that, we might go back and change that.

But more often than not, when you try to adjust the balance of some sort of ecosystem function, you don't get it right. They're very complex systems and when you push in one area, you don't always get the response you expect.

So those usually are not the actions that we're interested in.

MR. CATES: Let me ask a question and this is very --

MR. LECKY: Here, just to finish my thought, basically we're looking at trying to minimize the human impacts and, you know, that's our mission.

And oftentimes, the interest in species to species interaction was because there is some underlying human use that's trying to be accommodated. And we need to sort of be up front about that I think as we

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take those questions on.

MR. CATES: We have a situation in Hawaii where, for example, monk seals. There's no native word for monk seal in Hawaii. Many believe they're not native to the main Hawaiian Islands. There's no historical record of monk seals when Hawaiians were there.

MR. LECKY: Right.

MR. CATES: And whether it's rumor or not, monk seals were brought into the main Hawaiian Islands. And there's becoming an increasing conflict with having humans shooting them now, impacting fisheries, there's definitely a conflict.

And I know first hand that there's a -- NMFS is bringing them in and then releasing them.

So I guess the question that I got is, is there a limit, is there guidelines on to what you will do to save a species? I mean, would you take monk seals to a totally

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different area and say, well, we're going to do this and name a protection. Would you release them in California, would you --

MR. LECKY: Yes. So we don't have a manual, per se, to address those kinds of things, but there are, you know, just general conservation standards that sort of dictate some of the things that you can do or would do.

So, for example, we have taken monk seals to Johnston Atoll in the past and we haven't done well out there.

But we wouldn't relocate them to another place like California just because they weren't there.

There are theories, I mean, I know, I'm aware that there's no native word for monk seals. There's theories for why that is. There's also no anthropological record of monk seals on the main Hawaiian Islands.

But again, there's some theories about whether that means they were never

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there, or just the inhabitants before history pushed them out. So I don't know.

There's evidence of natural movement from the main Hawaiian Islands, from the Northwest Hawaiian Islands to the main Hawaiian Islands.

A couple of females have taken up residence there. It looks like pup production there is getting real close to what it is in the Northwest Hawaiian Islands.

So I think we're just beginning to understand the ecological dynamics in the Northwest Hawaiian Islands and what really may be constraining that fishery up there.

It may actually be some of their historic fisheries for armorheads and things like that in seamounts that have never really, you know, those fish populations have never recovered and that means there may be permanent reductions in populations that are dropping out.

MR. CATES: Well, things in Hawaii

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are not in balance, and I think a part of it is man-made in the name of protection. It's really, things are getting out of whack.

I mean, Kalihiwai Bay, I worked and lived there my entire life. I've never seen as many tiger sharks in that bay as I am now.

It's just full of -- everything's changing and everybody, a lot of people are observing it. There's monk seals, there's turtles everywhere. It's very noticeable what's going on.

MS. FOY: So there's a pause in the conversation here, so I'm going to jump in if you don't mind.

If we go back, if I can kind of keep us organized, it looks like what we have covered through Jim's discussion to us, to the whole committee earlier, and your questions to Jim here at this session, we've covered all of the issues that we want addressed. And then we requested Jim come to the November meeting.

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February was a special session. And I'd like to thank for Jim for your time out to come. It's been extremely helpful. Hopefully we can help you, too.

So to move on to the new business for our work plan for issues that we're going to address in 2010, although that's -- I would change that to the next meeting, address by the end of the meeting in October 2010.

I'm going to ask Keith to go through the first issue because this is his bailiwick. Keith?

MR. RIZZARDI: In the prior subcommittee meeting we were talking about having some direction for NOAA, to come up with an affirmative prioritization process.

And what I tossed out there today was a quicker way to solve the same problem, which is that we need to be talking to Congress about potentially relieving NOAA from the tension created by the 90 day and 12 month time frames.

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It's really two approaches to the same basic problem, which is -- Jim, I recognize you just have these external forces that hit you with more and more petitions.

And what I'm seeing is increasing sophistication of those petitions and increasing volume in those petitions and increasing numbers of species in those petitions. And yet your deadlines don't move. You're still stuck with the 90 day time frame for an initial determination.

And I appreciate your comments in the presentation today because it is a fairly low threshold. It may be warranted if the petition presents sufficient information to suggest that listing may be warranted. That's a low standard by comparison to what you've got to get done in 12 months.

And when you've got a petition for 83 coral species, some of them being deepwater coral species, you can't do it in 12 months.

Somehow we have to help NOAA get

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out of that box because I think we recognize that the flip side of that is if you don't, if you're still trapped with that deadline, there are other things you're not getting done.

And whether it be response to Deepwater Horizon or some other species listing decision that's of priority, everything gets subordinated to the timeline in the petition.

So recognizing what's happened with the 83 coral species petition and the Fish and Wildlife Services 404 wetland species petition, I'm asking our committee to step up and to speak to the issue.

And instead of this approach, which I think puts more of a burden on NOAA, of going through a prioritization process, I'm suggesting a quicker tool, which is change the time frames and shift it to make it so that the agency is held to an unreasonable delay standard.

It's the same standard that

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already exists in federal law. It is the federal APA standard. There's abundant litigation that's established what that is.

It would still be a mechanism where a petitioner who hasn't been heard, and who's unreasonably not been heard, would have their opportunity to go into court and be heard.

But it's different than the process we have right now, which is on the 366th day, NOAA gets a lawsuit, and then on the 390th day, they get a court order that says you'll get it done by the 400th day.

MR. CATES: I agree. I don't think it's, we're authorized to do that. If it says go to Congress under our charter as MAFAC, I think we're allowed to do that.

We're allowed to do that as the individual, but I don't think we're allowed -- we're here to advise the Secretary of Commerce who -- so because I'm --

MR. RIZZARDI: I'm happy to

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rewrite the phrase. Heidi, if you could switch to the other document for me.

MS. FOY: Mark, could I get you to speak to this?

MR. HOLLIDAY: I'm sorry, I will not.

(Laughter.)

MS. FOY: It's okay.

MR. RIZZARDI: Can we put a line in that says MAFAC encourages Congress to consider something?

MR. HOLLIDAY: I think you need to intercede with NOAA. So you would say that --

MS. FOY: Ask NOAA --

MR. HOLLIDAY: -- MAFAC recommends NOAA take deliberative action to put on some legislative agenda a change to some effect. But I don't think MAFAC would advise directly.

MS. FOY: I saw your hand up.

MR. CHATWIN: So can the agencies do that?

MR. HOLLIDAY: I'm sorry?

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MR. CHATWIN: Can the agencies do that? Try to change it back --

MR. HOLLIDAY: We develop legislative agendas all the time. And whether or not NOAA chooses to submit under a reauthorization or some other point in time a change in legislation, that's commonplace.

MR. RIZZARDI: So on number three, Heidi, it says, you know, scrolling over to the next page, it says MAFAC encourages Congress. So it should say MAFAC encourages NOAA to ask Congress. And revise it as appropriate.

MS. FOY: Yes. Wordsmith it.

MR. HOLLIDAY: Yes, we can fine-tune that.

MR. RIZZARDI: My basic premise is this statutory deadline is just not working anymore.

MS. FOY: Yes.

MR. RIZZARDI: And Tony, I'm particularly sensitive to your concerns and

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would like to make sure that you have some comfort with what I'm suggesting here.

MR. CATES: Tony, can I ask you guys a question? It seems that the process is abused by some groups, filing the -- I mean, always hit a deadline, they're too short and stuff.

The very groups that should be concerned about that are the environmental NGOs that are engaged in protecting the resources, because if you abuse something, then change is going to come.

Are you guys able to stand up or, I mean, is there a process to stand up to these groups and say, guys --

MR. RIZZARDI: They're independent organizations, they're the Center for Biological Diversity, Wild Earth Guardians. They will continue to file petitions. They have their own views and their own agendas and their own desires.

And, you know, I'm here on behalf

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of different organizations and I'm involved in different organizations. And I don't necessarily agree with their approach, but they're citizens, too, and they're embracing the tools that are available to them in the way they think is appropriate.

But I do think it's time for NOAA to speak up and to plainly address the challenge it's facing now and how difficult it's become.

And the fact that no matter how much expertise rests within the NOAA staff and how much they might want to prioritize things differently, they can't because these third party petitions are dictating their outcomes.

MS. FOY: Tony?

MR. CHATWIN: So I would just say that the environmental community is a diverse community. You know, I agree with what Keith said, and we have from extreme left to extreme right and some are in the middle.

MR. CATES: The aquaculture

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community can't bring it all together right now.

MS. FOY: Yes.

MR. CHATWIN: The -- what I would say, and this is more to try to shed light onto my experience within the environmental community, is that there is a concern that if you don't -- and I agree with you that, I actually agree with a lot of what's there, you know, that the system wasn't intended for this sort of multiple species petition -- is that not having something like this it would be, it's very hard to imagine how priorities would be set within the federal government.

I think that's something that, I think, is a concern, even though they have these tools. It's not a personal belief of mine, it's just what I know from my colleagues in the environmental community.

MS. FOY: Jim, can you speak to the way that Fish and Wildlife Service does the prioritization process? They seem to be

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dodged a lot.

MR. LECKY: Yes. And, again, I don't think it helps them a whole lot. There's two things.

Their budget is structured by the statute, so they have a specific line item in their budget for listing and a specific line item for recovery, one for critical habitat designation.

And so they're able to say, we've spent all of our listing money and we can't do anymore listing actions this year.

We don't have a budget structured that way. So the benefit of -- or the downside of our budget structure is we don't get to make that argument because the judge looks at our overall budget and says, well, just reprogram. So that's a downside to the way our budget, relative to this issue, is.

I actually prefer the way our budget is, though, because it does give us a lot more flexibility, like I talked about in

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my presentation, to look at, you know, where are we going to get the biggest bang for the buck when we look at, whereas Fish and Wildlife runs into those funding limits and can't move money around as easily as we can. So just two ways to do that.

So, but given that budget structure, that's one question. One thing that we could do if we wanted to go down the same path that they're in is reorganize how our budget is presented to Congress so that we have the specific line items. I don't really support that.

But, having said that, what they -
- I think their priorities are, their first priority is emergency listing.

So if they get a petition or if they're aware of a species that's really in trouble -- and they deal with a lot of small endemic species. Most of our species are highly migratory and wide-distributed, so we don't run into this problem as much as they

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do.

But if they've got a species that's endemic and it's really at risk and there's some threat that's going to wipe it out in the next 90 days or a year, their top priority is emergency listing.

Their second priority is completing listing processes for which they've done the status review and there's a proposed rule.

And their third priority is starting status reviews and acting on those and getting them to the proposed rule stage.

They used to have critical habitat and delisting as part of their priority system, but they partitioned those off away from the listing part of their program. Critical habitat is now its own separate thing and delisting is done under their recovery program.

MR. CHATWIN: So because we are, Fish and Wildlife Services Foundation is where

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we hear -- so not a couple years after we got this email, but within that prioritization, they still have to tackle multiple species in each of those different, let's say, columns.

And that, they are very hard-pressed to prioritize among species that are -- so if you have listed species --

MR. LECKY: Right.

MR. CHATWIN: -- it's very hard for them to prioritize one species over another.

MR. LECKY: Right. Right. So, and it gets -- so and the other part about their system is -- so they do have this priority system that's sort of based on threats, if you will.

And within that system, if they do make a -- if they do go through a process in their third tier and they decide something should be listed, then oftentimes, if they don't have the resources to complete the listing process, they set it aside.

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There's a -- one of the determinations that you're allowed to make in the statute is if listing is warranted but it's precluded due to lack of resources to complete the process.

Fish and Wildlife uses that a lot more than we do, we've actually never used it. We've considered it, but we've never used it. Fish and Wildlife uses it fairly regularly.

But even when you do that, then that creates an additional burden to keep track of that species. And so the -- if it gets into the emergency stage it gets booted up to tier one. So it's not a kind of a free lunch.

And then that whole priority system gets out of whack if somebody files a petition because petitions, by definition, go to the front of the line --

MR. CHATWIN: Right.

MR. LECKY: -- and they have to kind of be dealt with. So yes, and them too,

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they are starting to get these mega-petitions like that. It's got one for 400 species in the Southeast. And the product species.

They've got one for a couple hundred species in the Southwest, which they, they actually did deny that petition because basically it was just a reference to a website.

MR. RIZZARDI: Well, that one didn't quite rise to the --

MR. LECKY: Yes, yes.

MR. RIZZARDI: -- really low standard.

MR. LECKY: Right, right. So, but yes. I'm mean, they're struggling with this too, even with their priority system.

MR. RIZZARDI: I had an observation, Jim, on what you said and then a question for you. The observation is on the whole Fish and Wildlife budget thing. That, too, grew out of litigation and the reprogramming of budgetary priorities.

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MR. LECKY: Right.

MR. RIZZARDI: And the whole effort to line item everything was really, you know, Babbitt administration saying we're tired of spending all this money on critical habitat determinations and having to spend our time doing that instead of other things. So they got a cap on how much they were allowed to spend on an annual basis on critical habitat. And then that approach kind of spilled over into other areas.

But you mentioned the warranted but precluded. And my understanding of that is you're effectively saying, yes, the species should be listed.

MR. LECKY: Right.

MR. RIZZARDI: So there's already that threshold determination. It's not a put-it-off-till-later category as much as it's, we'll finish it later but yes, it should be listed.

And that's one my concerns. It'd

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be better if it was maybe warranted but currently precluded.

But it seems like there is a threshold determination that's made through that category of yes, we're going to list this species, it's just a question of a little bit of time.

MR. LECKY: So --

MR. RIZZARDI: Am I right?

MR. LECKY: Yes, but your logic I think is a little incomplete.

So the -- so you do your 90 day finding and you do a status review and you get to the point where you're going to make your initial determination. And there's, statute gives you direction on three outcomes.

MR. RIZZARDI: Right.

MR. LECKY: It's warranted, procedure, proposed rule. It's warranted but precluded, set it aside to keep track of it. Or it's not warranted.

So the maybe warranted is kind of

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a fuzzy -- that's sort of what you're looking at when you make your 90 day finding. You're sort of past the threshold of the listing may be warranted and you want to take a look at it.

And then you go through your status review and you say, yes, we've looked at it and we think it is warranted. And if it is warranted, it's either warranted do it, or warranted but precluded.

MR. RIZZARDI: Do you think NOAA should be taking more advantage of the warranted but precluded category in order to avoid having its -- the constant litigation issue and having its priorities set for it.

MR. LECKY: So I think we're getting close to starting to use that tool. The -- we haven't prior to that because the times we've floated it up as a potential, we sort of run into this, well, you know, you've got \$200,000,000 in your budget, reprogram some.

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And it's not -- I'm a little bit loathe to go down the path of trying to partition that --

MR. RIZZARDI: Right.

MR. LECKY: -- like Fish and Wildlife does because I like the flexibility.

So we haven't really done it, you know, but if we get too many more of these mega-petitions for 80 species at a time we're probably going to get there, where we want to do that.

MR. RIZZARDI: And then once you get there, you'd never get out of it because then there's more petitions behind it that end up with more warranted but precludeds, and you just have this building workload that you never are able to really fully address.

MR. LECKY: Yes, yes. And then as I mentioned, we do have to keep track of it and check in. And again and again, you know, you're supposed to make a decision about whether you can proceed or if it's still

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warranted or you know. So it doesn't necessarily save you work.

MR. RIZZARDI: One thing I would like to say to the committee's benefit is while there's a lot of frustrations that come with the petition process, it also has a benefit.

You know, what you have there are local folks who understand the ecosystems, who are aware of these species and sensitive to them and see these things. And that's why the petition process exists in the first place is to enable those folks to say, hey, Agency, pay attention, we've got a significant concern here.

Randy, you know, I hear your concern about the abuse of the process and you know, there's certainly an argument that that's what's at play here, but there's also a very legitimate basis for the petition process and I want folks to understand that.

MR. CHATWIN: In the case of

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corals, it's been a while since that petition was filed, right? So has it met the 90 days yet? 90 days?

MR. LECKY: Yes. So we got a -- yes, we did get a petition. And when we made a 90 day finding, we actually threw one of the 83 out. But and --

MR. RIZZARDI: It's 82 now.

MR. LECKY: It's 82 now.

So, yes, so we're in the process of trying to figure that out.

Seven of those, I think it's seven of those 82 are in the Gulf of Mexico and the rest are Pacific species.

MR. CHATWIN: Pacific?

MR. LECKY: Yes.

MR. CHATWIN: And no Caribbean species?

MR. CATES: Enters 18 or something --

MR. LECKY: Well, the goal -- Caribbean and Gulf of Mexico.

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MR. CHATWIN: Okay, yes. Because that -- corals in the Caribbean most likely are in worse shape than the Pacific.

MR. LECKY: Yes.

MR. CHATWIN: I mean, just in terms of coral cover, and this is NOAA's data, you know, the average in the Caribbean is 20 percent live coral cover where it's like 40 percent and higher in the Pacific. And depending on where you are in the Pacific, it's even higher.

MR. CATES: I can share again, in Hawaii, it is such a problem right now that it's up to our congressional legislation, Senator Inouye, to totally change the way the ESA process is done because it's strangling Hawaii right now.

I mean, commerce -- we have a harbor that can't even go into harbor anymore, you know, containers have to go to a different harbor on the other side of the island because of these corals that are in a harbor that was

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once dredged, and they just naturally grew there.

MR. LECKY: That's not an endangered species issue, because they're not supposed to be on it, so that's just a coral conservation strategy.

MR. CATES: No, it's actually the ESA process is got the agencies, Fish and Wildlife and NOAA, regionally, they're not sure how to recommend the mitigation to do the dredging in the harbor. Basically they're saying, well, we've got to wait to see what happens with the ESA.

MR. RIZZARDI: Is it the Hawaiian ESA?

MR. CATES: It's the 83 corals. There's like I think 18 of them in Hawaii and they don't want to make a recommendation in Hawaii --

MR. RIZZARDI: Some of the 82 are on the petition.

MR. LECKY: So, okay.

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MR. RIZZARDI: They did some of the -- some of the 82 were in the harbor.

MR. LECKY: So all right. So they're still -- I don't --

MR. CATES: They're scared to do, take action. They're scared to -- and we have these dredge projects that literally have been years on the hold and they can't go in there anymore it's so filthy. And that's a huge cost to Congress.

MS. FOY: Heidi has a question? Who has a question?

MS. LOVETT: I was just asking for clarification. When you refer to the petition, would that actually halt some activity, prior to a determination.

MR. LECKY: No, I don't think anything gets imposed under the ESA until you get to the proposed rule stage.

MS. LOVETT: That's what I thought.

MR. LECKY: If there's a species

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that's proposed for listing, when Section 7 kicks in, it may just replace another action, actually might jeopardize. At this point I don't think there's any, yes.

MS. FOY: Heidi, can you scroll back up to one?

MR. CATES: But if you have a staffer, for example, that works for NOAA that's a coral specialist that has to give a recommendation on an Army Corps permit, they're a little bit hesitant to do that right now. And their response is well, we need to see what happens with the listing of the ESA, which is due in that time period.

So, sorry Mr. Hawaiian judge, you know, you've got to wait until we see what they do over there.

MR. LECKY: Now, see that's the Corps of Engineers deciding to not take action because they're uncertain.

MR. CATES: It's actually NOAA.

MR. LECKY: Well, NOAA may be

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saying we don't know what to tell you or we're not going to provide you any guidance, but we don't have any legal authority to hold up the Corps of Engineers.

MR. RIZZARDI: Yes, there's some other mechanism that's got to be causing the constraint. Something else is kicking in.

MR. CATES: When you have an Army Corps permit and they send it out for review, it goes to the NOAA --

MR. LECKY: It goes to NOAA and if NOAA doesn't respond, then they proceed without a comment from NOAA.

MR. NARDI: Or is it their choice to proceed without, or not to proceed at all.

MR. CATES: It's their choice to -- what they're saying is they're going to only be cleared --

MR. LECKY: They may be saying that, they may be pointing the finger at NOAA, but I think they're the ones that are typing the decision.

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MR. NARDI: Does the duty to confer as a candidate species kick in for a listing petition, John?

MR. LECKY: I think the conference requirement is on proposed species. I'll just look it up real quick.

MS. FOY: While Jim --

MR. CATES: I mean, I can tell you the agency asked me to discuss this at this meeting. And so to send during NOAA's staff, I said, can we bring this up if we're strangled for the Kauai Hawaii dredging project.

MS. FOY: While Jim's looking that up, I'd like to ask the subcommittee to look at the recommendations that we have up on the board.

MR. LECKY: Yes, the conference requirement is for proposed species.

MR. RIZZARDI: So I think it said we're not even --

MR. LECKY: You can't until it's

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proposed.

MR. RIZZARDI: Right.

MS. FOY: So number one. Make that plans that the ESA implementation, especially with respect to the effects of climate and habitat change, pesticide, ocean energy development, and ocean noise on listed species requires analysis of complex science.

NMFS should seek additional staffing for the Office of Protected Resources to enable the agency to better respond to the increasing demands of ESA implementation.

Before I put this to the subcommittee to discuss, I want to make sure that with Jim, that we're not stepping out of line here. Are you happy with that, Jim?

MR. LECKY: Yes, I mean we --

MS. FOY: Would you like a little bit more help?

MR. LECKY: No, we've been trying to get more resources to deal with this.

MS. FOY: Good.

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MR. RIZZARDI: Just a phrasing thing. Could you, Heidi, the last line in the first sentence, require analysis of complex science, and move that immediately after ESA implementation.

MS. LOVETT: So just --

MR. RIZZARDI: Yes, that phrase, "requires analysis of complex science," cut and paste it. No, I'm sorry at the top. So it should say, "MAFAC finds that ESA implementation requires analysis of complex science" --

MS. LOVETT: Oh, that.

MR. RIZZARDI: -- comma. There you go. Especially with respect too -- that's it.

MS. FOY: Any discussion from the subcommittee? Okay. We'll bring that to the full committee for a mention.

Number two, NMFS should give increased attention to celebrating the successes of the ESA, in part by completing

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the process of downlisting or delisting species where appropriate. In particular, NMFS should evaluate the existing science on sperm whales, complete its determination on whether the Hawaiian populations of sea turtles or humpback whales constitute distinct population segments, and determine whether these species can be delisted or downlisted.

MS. LOVETT: Do you mean these distinct population segments or do you mean species? In that last part of the sentence.

MR. RIZZARDI: These species, comma, or their distinct population segments, comma.

MS. FOY: Good. I would like to add a sentence in there that appropriate PR, public relations, press releases should happen at the same time. We need to celebrate the successes of it when we can.

MR. RIZZARDI: So in the first sentence where it says, "by completing the process of downlisting or delisting species?"

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MR. CATES: Could say celebrating and publicizing.

MR. RIZZARDI: And by publicizing. Sorry. Yes.

MS. FOY: Any other discussion from the committee on this topic? No?

MR. RIZZARDI: Jim, again, are you comfortable with those statements?

MR. DEWEY: I don't think it's worth trying to wordsmith something in, but I am toying with the idea of trying to add a sentence that captures my earlier statement of continued, unnecessary listing in places, an undue regulatory burden on --

MS. FOY: Okay. So you mean a species being carried on the list --

MR. DEWEY: Unnecessarily --

MS. FOY: Unnecessarily.

MR. DEWEY: Places consultation burden and so on, and prerogatives, you know, restricts economic development, economic activity unnecessarily. But I'm fine. That's

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all --

MR. RIZZARDI: Well, I'd also make the point that keeping it on the list creates an unnecessary burden for the agency where they have to go through the consultation process, where maybe they could've been spending those staff resources on other listed species protection efforts.

MR. DEWEY: And if it is worth the sentence then capture both.

MR. CHATWIN: I have a question. The clause assumes that NMFS hasn't done an evaluation of the existing science on sperm whales or sea turtles. Is that the case?

MS. FOY: Not because they don't want to, Tony, it's because there's a lack of funding and a lack -- those surveys are very difficult and expensive.

MR. CHATWIN: Oh, no, and I know that sea turtle surveys and marine mammal surveys are --

MR. LECKY: And as we discussed, I

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think you're going to, in the agency, you'll run into a lot of push-back, and we don't know enough about sperm whales to take them off the list and so we should keep them on.

MR. CHATWIN: And so --

MR. LECKY: But, you know, but we do think we know enough about humpback whales to take a hard a look at marine populations there that we want to take off the list.

And we do have species like green sea turtles that we're pretty comfortable that they've recovered, we just haven't -- we just can't seem to get to it for various reasons.

MR. CHATWIN: Should we specify green sea turtles? Because I know the Pacific loggerhead turtles, and I'm not sure how many of them show up --

MR. LECKY: Well, I was going to say since Hawaii --

MR. CHATWIN: Have populations of sea turtles.

MR. LECKY: Oh, yes, it should say

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green sea turtles.

MS. FOY: Heidi, I would preface number two with something, just a phrase, because of the financial burden accompanying a listed status both to the agency and the industry.

MS. LOVETT: I'm sorry, say that again?

MS. FOY: Because of the financial burden accompanying a listed status, accompanying the listed status, by both NMFS and industry --

MR. JONER: Jim --

MS. FOY: -- NMFS should give increased attention.

MR. JONER: -- it may be hard to explain this, but do you maintain a list of species that are candidates for delisting? Or where there's --

MS. FOY: Often, as often --

MR. RIZZARDI: I think it's better without that.

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MR. JONER: Met the criteria to be delisted?

MS. LOVETT: Keith's going to send you something better on that one.

MR. LECKY: No. The answer's no, we don't.

MR. JONER: Can you do that? Or legally, are you allowed? Is that --

MR. LECKY: Yes, sure we could do that. So I would say most of them don't meet the criteria.

MR. JONER: Well, okay so as a species, yes -- you know that was ready. Is there a provision or requirement for NMFS to initiate that, that process, or do you -- where does it start within the government?

MR. LECKY: So the delisting process should start with recovery plans so we don't -- and we are developing recovery plans for some of those species. And I'd have to go back and make sure that we look at the sperm whale recovery plan. Probably spent too much

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time talking about that one specifically.

But most recovery plans that we're developing now do have pretty specific delisting criteria. If you look at the gray whale data that was produced in the '80s when we were considering delisting it, there was a classic, you know, population growth curve of, you know, exponential growth from -- of a depleted population, and clear signal of limiting factors kicking in and the growth rate declining.

It was pretty clear that the population was beginning to behave like a population that was approaching its carrying capacity. So, you know, we did want to take it off the list to sort of celebrate that. But we haven't seen that kind of a signal in a lot of our species. There aren't too many that are really in that --

MR. JONER: Well, I guess the question is when you do, if you do see it, is there --

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MR. LECKY: Yes, yes. So Hawaii -
- so actually if you look at George Balazs's
work on Hawaiian and Hawaiian green sea
turtles, he's got a -- I don't know, I think
he's been working out there for 30 years or
something. He's got a really well-documented
story of recovery of green sea turtles in
Hawaii.

And, yes, I think, you know, we
probably do want to act on that at some point.

And I think, you know, we had laid out a
strategy for looking at all of our sea turtles
to see if there were some that we could take
off, or at least recognize the distinct
population segment structure of those global
listed species. And our priorities were defined
by petitions, in part, for -- so that the
loggerhead's first. We do want to look at
greens next.

In addition to Hawaii, we probably
will look at greens in other areas to see if
they can, if we can sort of reconcile what the

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distinct population composition of that species is globally. But because Hawaii's already listed separately, I think we could deal with it separately.

And then with, you know, the other species are leatherbacks and Kemp's, and Kemp's are only one population, so.

MS. FOY: I'd like to point out to everybody that Keith wordsmithed that first sentence.

MR. RIZZARDI: I'd actually like to make it the second sentence.

MS. FOY: The second.

MR. RIZZARDI: And, Heidi, if you could please. And just hear everybody's feedback on it.

MR. CATES: Jim, how do you weed through your science for, with making sure that personal agendas don't affect the science? Has that ever been a problem?

MR. LECKY: No, I don't think personal -- so I try to distinguish science

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from sort of the management decisions. And I think our science is -- I hope it's pretty pure and doesn't have a lot of personal agendas in that. Some of them may be interpretation and recommendations on how to approach various management decisions, they might send me that, but that tends to get ferreted out as decisions get pushed up through the chain.

And I guess, you know -- so I don't know what kind of relationship you had with Bill Robertson before the -- but, you know, a lot of these decisions kind of get dealt with. They start at the staff level and get dealt with at that level, and a lot of the inter-agency discussion is staff to staff between agencies.

You know, if there are issues, I don't think you should be shy about elevating issues within the regions or from the regions to headquarters, if you think there's an issue like that.

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MR. CHATWIN: So I just wanted to jump into, back to this, and I think the language that was added is unnecessary and makes assumptions about the status of threatened and endangered species, which I don't think --

MS. FOY: Which -- where?

MR. CHATWIN: Well, saying that, I mean, we're assuming that species have achieved their recovery criteria and are not being delisted --

MS. FOY: How about this, Tony?

MR. CHATWIN: And I just think that the whole emphasis here is on reducing consultation, and concern about the burden on the agency, I mean, and on the regulated entities. But I see value in having NMFS, whose primary focus, or one of the primary focus, is to look out for marine resources, being consulted on the marine resource issues.

And so I don't think we should be saying, you know, we think that there are

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species out there that have met all the criteria and haven't to be delisted. I think that if you want -- I'm fine with supporting a statement that says, NMFS should investigate whether there are species, and that they should be delisted if they meet the criteria.

But that statement to me means that MAFAC is saying that there are indeed species out there that have met the criteria and are left with full status.

MS. FOY: So if I could make a suggestion --

MR. CHATWIN: So I would like that stricken.

MS. FOY: Friendly -- can we make a friendly amendment and then see whether it qualifies, and if not, you can suggest -- what if we say, "MAFAC notes that retaining the listing of species as endangered or threatened after the species has achieved" -- let's see, after --

MR. RIZZARDI: Recovery status.

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MS. FOY: "After the species has shown scientifically to have achieved recovered status."

I mean, there has to be scientific proof, number one, to take it, to even consider it for the delisting process.

MR. CHATWIN: But there, see -- Jim, maybe you can help here. If there is scientific evidence, I mean, to --

MS. FOY: Okay. Why don't we keep this open to you making a friendly amendment to that, and then just removing the sentence -
-

MR. RIZZARDI: We've achieved --

MS. FOY: -- as long as Bill --

MR. RIZZARDI: We've achieved the statement. We can strike that line all through there, and I think as a committee we would have achieved consensus on an important issue.

MS. FOY: Maybe. Let's see if Bill's happy with that. Bill?

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MR. DEWEY: I'm fine with that.

MS. FOY: You're fine with that?
Then let's do that, and we'll maintain
consensus in the subcommittee.

MS. LOVETT: Taking the --

MS. FOY: Take that -- just delete
it.

MR. RIZZARDI: Just take it out.

MS. FOY: Yes. So to move things
along --

MR. RIZZARDI: Thanks, Jim.

MS. FOY: -- I'm going to request
-- do we have consensus?

MR. CHATWIN: Actually, Heidi,
could you --

MS. FOY: Are you all happy with
the --

MR. CHATWIN: -- raise it? Yes,
thanks.

MR. CLAMPITT: As I said before,
that's all right.

MS. FOY: Okay. So number three -

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MR. CHATWIN: Hang on a second.

MR. JONER: I just, if I could --

MS. FOY: Fine, fine, go ahead.

MR. JONER: May I just ask Tony to explain that one, or you started to explain it and then --

MS. FOY: Well, actually, wait, wait. Steve, if you don't mind, can we go through number three and then -- because we are running out of time.

I mean, that's -- we still have to figure out a work plan for the next meeting. So if anybody has any questions -- Tony, if you don't mind, I don't want to de-emphasize what you're saying, I understand it's important, but --

MR. CHATWIN: No, I mean, it's fine how it is now.

MS. FOY: -- we need to keep it rolling along a little bit.

So issue number three, "MAFAC

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finds that a thorough scientific analysis takes time, and some petitions to list species, such as a recent petition to list 83 species of coral, which can" -- I would say which -- "which cannot be adequately responded to within the statutory time frames of 90 days for an initial determination or 12 months for a final determination.

MAFAC finds that the deadlines associated with this petition process, as well as the associated litigation and court orders, can undermine NMFS's expertise and render NMFS unable to set its own priorities.

To the extent that the ESA petition process requires a deadline for NMFS to respond, MAFAC encourages NOAA to ask Congress to consider whether an unreasonable delay standard, as included in the Federal Administrative Procedure Act, would be more appropriate."

I'd like to put that one on the table for discussion. Tony?

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MR. CHATWIN: So I would like to know where we, MAFAC -- how has MAFAC found that there is inadequate time to deal with 83 species of coral. Because what I've heard, I know this -- but what I've heard is that the 90-day period came and you made the determination to move forward, a decision was made, and you're moving forward and you're working within the 12 months.

So I just want to know where we found that. But let's just take that piece first.

MS. FOY: So why don't we change the wording on that? Make that, "notes that a thorough scientific analysis takes time, and some petitions to list species," and then strike the 83 species of coral, "cannot be added to -- adequately responded to within the statutory time frames."

I mean, but the truth is, here, wait a second, Tony, is that petitions -- that NOAA spends a lot of time responding to

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litigation. That's what we're trying, to lessen the burden of litigation on Jim's staff. So I agree that sometimes it's necessary --

MR. LECKY: So I can tell you that we are uncertain that we're going to make the one-year finding deadline for these corals.

MR. CATES: You are or are not?

MR. LECKY: Uncertain, we're not sure. We knew we wouldn't be able to complete the one-year findings for the four ice seal species that were petitioned a couple years ago, I forget exactly when that petition came in.

We actually reached out to the petitioners, CBD, and agreed to a protracted schedule. So that one petition is -- we're slowly working our way through those four species. We've completed two of those species over a two-year period and the next two over the next two-year period.

So we recognized with that one

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that there's no way we could. And it's only through the good graces of, I hate to say this, it's only through the good graces of CBD that they gave us extra time and some reasonable timeframe to go do that analysis.

So we haven't approached them on the 83 corals because we're still kind of struggling with how to go about handling that. It may be that some of those coral species could be, you know, sort of analyzed together because there's only one threat that's really been identified. You know, some corals are overfished, some are probably not.

MS. FOY: Tony, I see consternation all over your face.

MR. CHATWIN: Well, the thing is, you know, the stakeholders that are impacted by NOAA decisions and responsibilities are not only the environmental community --

MS. FOY: No.

MR. CHATWIN: Half, approximately half of the litigation that the agency has to

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deal with come from industry. This has an impact on one stakeholder's ability to impact the agency.

And while I understand what this I think is trying to, the issue here, I'm concerned about supporting something that will talk about impact on the ability of one -- supporting something that would impact, if it goes all the way --

MR. RIZZARDI: I'm going to offer a competing perspective on that, Tony. I think as written, it would affect industry just as much as it would affect the environmental community, because if industry files a multi-species petition to delist a number of species, they get the same timeframes, they have the same issues, and NOAA has the same burdens.

I don't think it's just targeting one group of stakeholders unfairly.

I do hear your point about the findings. I sent some slightly softer

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language to Heidi that maybe will give you some more comfort where we're expressing our concerns but not making formal findings.

I believe this should be about science and allowing NOAA sufficient time to do the scientific process correctly.

MR. CHATWIN: If NOAA can't do the scientific analysis correctly, how does that impact the decision?

MR. LECKY: So two things. If we can't do it -- well, so I would say if we can't do it correctly, then we wait until we think we've got it correct. That means we miss the deadline, and if we miss the deadline, we get sued.

We get sued on a deadline case, there's no defense for it and we lose and we pay attorney's fees.

MR. RIZZARDI: And then sometimes, worse yet, what happens is the agency goes into court and says, Your Honor, we need another two years to get this done and done

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right. And the judge says, you got six months.

MR. LECKY: Right.

MR. RIZZARDI: So then six months and one day later they're back in front of the judge trying to explain why they still haven't met the deadline, and they get hit again with another round of fees.

And it becomes this process where you're just in litigation, when at some point, the agency, who is the expert in this field, should have the opportunity to exercise its discretion and set some reasonable priorities.

MR. LECKY: So that's a downside of listing. I, you know, we -- I think an -- so unreasonable delay, so we've been sued for unreasonable delay in consultations, for example.

I mean, it is an avenue for review that the public has. It's, you know, if -- I think we would probably, if we got a petition that we had accepted, and, you know, did five

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years, clearly that would be an unreasonable delay, I would say. If it was two years, you sort of may be getting there. I don't know. But, I, you know, I --

MR. RIZZARDI: I'll also make a crass point about how the litigation process works here. Shifting this from the APA, or from the current process of the ESA to the APA, also means that it's not a guaranteed attorney's fees issue.

What happens right now is under the statutory process, they go into court and on due date plus one, the entity who files suit is guaranteed to recover attorney's fees.

If it's an APA-based lawsuit, it changes and they have to become the prevailing party in court in order to recover attorney's fees. So it creates less of an incentive to litigate immediately when the agency is acting reasonably and trying to balance its priorities.

MR. CHATWIN: I mean, the agency

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cannot be defining basic institutional information.

MR. LECKY: Oh, no. Yes. No. They say we can't tell if we don't know. That actually has been litigated. The courts have ruled that the statutes lay out decision frameworks and you have to decide, we don't get to say, I don't know.

MR. CHATWIN: But you could say, no, it doesn't warrant a listing.

MS. FOY: Say that again, please, Tony? I couldn't hear.

MR. LECKY: You could say -- well, if you say it's not warranted, then basically you're saying it's not threatened or endangered, and you've got information that -- so that decision is in itself judicially reviewable.

MR. CHATWIN: Yes.

MR. RIZZARDI: It would become --

MR. LECKY: But if our argument is that it's not threatened or endangered, then

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that position's vulnerable.

MR. DEWEY: So it seems to me like there're potentially two solutions here.

One is to go back and have the agency ask for a timeframe relief from Congress, but the other is to ask for adequate resources to complete a comprehensive review, I mean, putting in the time with that.

MR. RIZZARDI: I don't know how, and let's take, for example, the U.S. Fish and Wildlife Service and the petition they've got before it, I don't know how, no matter how many resources you threw at it, they would be able answer the petition on 404 wetland species in the southeastern United States in the nine months that they'll have.

They'll have 90 days to even get through the maps, get through the list of species, figure out which ones meet the bare minimum threshold.

Let's say 300 out of the 404 have some information that the species listing may

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be warranted. They have, from that point, nine months to finish the process, get status reviews done, get all the science together, and make a decision that's not arbitrary or capricious on the 300 species.

Science doesn't work that fast. And the agency doesn't have the discretion because on --

MS. FOY: You know, when you think about it, Bill, that doesn't even give you a full year on wild species, which if they're, have migratory patterns, that's pretty much what we need, a bare minimum.

MR. DEWEY: Does the review typically involve new science or data collection or is it a review of the existing science and data?

MR. LECKY: So the standard for the decision is the best available science.

MR. DEWEY: That doesn't mean creating new ones.

MR. LECKY: So it's usually not

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creating new science, but it's a lot of work to synthesize, and it's a lot of work to locate the best available science.

MR. DEWEY: Well, I'm just saying, I'm saying, you know, from a practical standpoint, in my opinion, and I hear what you're saying, you know, but to me it's a proposal and you can say, look, give me 500 biologists, I'm going to put them on these three species and we're going to get it done in 90 days, or give me more time, or whatever.

I think there's two ways to approach. It isn't just --

MR. LECKY: Well, there are. And it becomes, and you get into a bind and it becomes an allocation issue and so the thing that suffers is usually the recovery.

So this is the reason we don't have a lot of recovery plans or recovery plans are late. So there's a statutory requirement to develop a recovery plan, but there is no statutory deadline for having a recovery plan.

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So probably the thing where you can achieve the best conservation benefit winds up being a lost priority for the agency.

And that's a problem.

I guess -- you know, for Congress to act on the ESA is a hard thing for them to do. They haven't done it -- it's been, I forget, probably close to 30 years. It hasn't been reauthorized for like 15 years or something like that.

The last attempt to look at it was Pombo's attempt, which was a -- "fiasco" would be a kind word. Really a missed opportunity.

I think Pombo didn't do any of us a service, even though he did keep the statute, tried to do the statute clearly.

But, you know, this would -- so, I mean, we, NMFS could make this recommendation to NOAA, and I think NOAA deciding to go forward with it would be a challenge. They'd have to convince Congress to go forward with it, and then finding somebody in Congress to

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take it on.

I think the reluctance to take it on in Congress is if you open it up, even for a narrow purpose like this, that all the other interests that don't like it are going to try and come in and take it away, or are interested in one of the --

MR. DEWEY: All the more reason to put, in my opinion, as a second alternative, get the agency the adequate resources to be able to do it. And I think if it's unlikely that you're going to get the statutory fix you're looking for, then make the alternative recommendation as well.

MS. FOY: Actually, that's, I don't remember if that's one or two.

MR. LECKY: I'm not going to say to not recommend more money for my program, I mean.

(Laughter.)

MR. RIZZARDI: Well, I think we already have.

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MR. LECKY: Yes.

MS. FOY: Well, that's -- yes.

MR. RIZZARDI: That's what number one says already.

MS. FOY: Well, in that case, let's refer to the facts of the -- I don't know.

MS. LOVETT: Do you want to tier it?

MS. FOY: To tier it?

MR. CHATWIN: May I suggest something?

MS. FOY: Please.

MR. CHATWIN: Where it says NMFS expertise have rendered NMFS unable to set its own priorities. You know, I was struck by what you said about the recovery plans. Maybe we could be more specific about the priorities.

You know, I would say, I don't know what specific language, maybe you can help me here, but, you know, something to

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expedite the development and implementation of
--

MS. FOY: The recovery plan.

MR. CHATWIN: -- recovery plans,
so that we're saying on the paragraph above
that they should be considering delisting to
get to that point, we need to have the
recovery plans developed and implemented.

MS. FOY: Well --

MR. CHATWIN: I can see why we
created a strong incentive to list, or to
consider the listing, because if that's
species is on the brink we could lose it.

But then it just doesn't make
sense that once it's listed, it doesn't get a
recovery plan for five years.

MR. RIZZARDI: Can I put in a --
for example, deadlines associated with listing
petitions for new species can interfere with
other efforts to develop recovery plans for
existing species.

MR. CHATWIN: Develop and

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implement, I would say.

MR. RIZZARDI: Develop and implement recovery plans for existing listing.

So then it's -- okay, I'll read this slowly.

MR. CHATWIN: Is that an accurate portrayal?

MR. LECKY: Yes.

MR. RIZZARDI: Heidi --

MS. LOVETT: Wait a minute.

MR. RIZZARDI: -- "for example," comma.

MS. LOVETT: Can you wait just a minute? Yes?

MR. RIZZARDI: "Deadlines associated with listing petitions for new species can interfere with other efforts to develop and implement," and then what you have there, "recovery plans for existing listed species." Other efforts to develop and implement recovery plans for existing listed, or make it already listed species.

MR. CHATWIN: Can we --

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MS. FOY: May I --

MR. CHATWIN: Given that there's so much flexibility in the NOAA budget, what incentives are there, unless you've got conditional flexibility in the timelines for petitions, that enhanced sensibility would actually lead to this outcome of development and implementation of recovery plans.

MR. RIZZARDI: We're back to number two.

MS. FOY: Yes.

MR. LECKY: Certainly the agency appreciates the value of a recovery plan for a couple of reasons. It does define a goal to work toward, it also gives a pretty clear impression of what the limiting factors are that are impeding recovery. So it allows you to fine-tune what you're doing with other agencies in the Section 7 consultation process.

And it, you know, to the extent you do have conservation programs -- so we've

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got, for example, with salmon we've got the Pacific Coastal Salmon Recovery Fund and this year we've actually got a fairly good slug of money in the endangered species cooperative conservation grants, which are our efforts to work with states and tribes.

Those dollars can be focused on projects that are likely to have a good conservation benefit, based on the analysis that's in a recovery plan.

And then finally, a lot of the actions that we want to be taking place in recovery plan are really under the purview of other agencies.

So maybe we want Corps of Engineers to put a temperature control device in or put a better fish passage facility in. Having that in a recovery plan allows us to just point to other agencies to how they might use their Section 7 obligations to implement those things. So --

MR. RIZZARDI: There are

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incentives here.

MR. LECKY: Yes, yes.

MS. LOVETT: You wanted this to go in here, correct?

MR. RIZZARDI: Yes.

MS. LOVETT: And may I, in a friendly way, suggest instead of saying, "unable to set its own priorities" you might say something like, "unable to meet its existing priorities."

MS. FOY: Yes, it's not --

MR. RIZZARDI: Sure.

MS. LOVETT: Okay. I just think it sounds better than "own priorities."

MS. FOY: I agree. And this, I imagine, will be wordsmithed tomorrow in front of the full committee again. But pass it on like that.

I don't want to change this now, but I have a concern that if Congress doesn't want to give in the ESA, I think we need to request that more staff and resources be

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diverted to Jim's office.

And I know we requested that earlier, but I think maybe we need to strengthen the language.

MS. LOVETT: And this was all in number three, correct?

MS. FOY: Yes.

MR. RIZZARDI: How about at, in, at the end of number one. You simply add a phrase at the end that says, "particularly to address the concerns raised in number three below."

MS. FOY: Yes, I'd be happy with that. Did you hear that, Heidi?

MS. LOVETT: Yes.

MR. RIZZARDI: So at the very end of number one, you just put a comma, "and to otherwise address the concerns noted in number three below."

MS. FOY: So are we all happy with where we've gotten for the current listings? Did you want to read the whole thing --

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MR. CHATWIN: Yes --

MS. FOY: Tony?

MR. CHATWIN: There is that language that I sent to you.

MR. RIZZARDI: Oh, on the ESA.

MR. CHATWIN: Yes.

MR. RIZZARDI: Is that for this or is that for --

MR. CHATWIN: For the committee. I don't care what committee it goes to.

MS. FOY: You don't care about what?

MR. CHATWIN: What committee it goes to.

(Laughter.)

MS. FOY: Okay. So let's move on from this. This is what we will report back to the full committee, then ask that they pass motions on.

So let's move on to new business and issues that we would like to address at the next meeting in October.

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We're going to be down, I assume, somewhere in the Gulf, and we're going to have a lot more on our plate from Deepwater Horizon. Are there any particular issues that the subcommittee would like to address?

MR. LECKY: Address to you?

MS. FOY: Do we have a pick?

MR. CHATWIN: I would like to learn more about the critical habitat designation and core protection of the resources, and how that gets --

MR. LECKY: The process for visiting critical habitat?

MR. CHATWIN: Well, what is considered, yes. And maybe some examples that are relevant to the Gulf?

MS. FOY: Is that something --

MR. CHATWIN: That would --

MR. LECKY: I'm happy to give a presentation on that.

MR. DEWEY: I don't know if it's of interest to the broader group or not, but

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Mike alluded to, Mike Rubino alluded to it this morning that the Nationwide Permit 48, Army Corps Nationwide 48, is for all existing shellfish farms in the country.

And it's going through a reauthorization, five years all on nationwide is going through reauthorization.

There was a new one last round and the Joint Subcommittee on Aquaculture, chaired by Gary Jensen from USDA, is taking on that renewal to see if they can't improve on the process and facilitate coordination between all of the professional agencies that are involved in that.

So, you know, I'd like to think that it may be a model that we can all learn from if they do it right. I don't know where they might be in that process in October, and whether that might be something people are interested in hearing about or not, but I'll throw that out there.

MS. FOY: What do you mean? In a

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subcommittee meaning instead of --

MR. DEWEY: Yes.

MS. FOY: Okay. Talk to me about that later, Bill, I'm not familiar with it.

MR. CHATWIN: So, Cathy, just back to this EFH thing because yesterday when --

MS. FOY: EFH?

MR. CHATWIN: No, this is a different thing.

MS. FOY: Okay.

MR. CHATWIN: Sorry, if you're not --

MS. FOY: Okay.

MR. CHATWIN: Yesterday I had a question and that question was referred to subcommittee, and then we discussed it in subcommittee and you asked me to develop language. I don't know if you remember.

MS. FOY: I did? No.

MR. CHATWIN: Yes.

MS. FOY: Sorry.

MR. DEWEY: This was in our

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Deepwater Horizon discussion?

MR. RIZZARDI: I have it, yes --

MS. FOY: Oh, I have it.

MR. RIZZARDI: -- I have a two-and-a-half-page document right now that contains everybody's feedback on the Deepwater-Horizon-related and emergency-related issues, which does include your EFH language.

So I have a document that I've been tinkering with. It's -- everybody's come and talked to me and I will distribute this.

MS. FOY: Now, this is a document as far as making a motion to the full committee tomorrow, or this is an agenda item at the meeting?

MR. RIZZARDI: Yes, I think we need to decide how to handle it now because obviously we've run out of time for this meeting, again.

MS. FOY: Okay. Well, if you all don't mind I'd like to take a few more minutes

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because I think this is important to get nailed down now so that we can have some recommendations as far as agenda items for the next meeting.

Tony, give me a little more feedback. Refresh my memory. You've got it?

MR. RIZZARDI: I put it in on the screen.

MS. FOY: You put it on the screen.

MR. CHATWIN: So my question is, if it's not addressed here and it's not necessarily a protected resource issue, so where are we going to address it?

MS. FOY: My thought is, since it is an essential fish habitat issue, that is most appropriately addressed, if it doesn't concern the full committee, in Tom's committee, which is the ecosystem management. Would that seem to fit?

MS. LOVETT: That committee is not scheduled to meet again at this meeting.

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MS. FOY: Not at this meeting but next meeting --

MS. LOVETT: Okay.

MS. FOY: -- we could ask that it's put on their agenda. Okay. Well, do you want it addressed tomorrow?

MR. CHATWIN: Are we going to make recommendations in regard to the whole first day where we talked about --

MR. RIZZARDI: The MOU and --

MR. CHATWIN: -- yes, there was, that was brought up.

MS. FOY: Oh, so this is in --

MR. RIZZARDI: This is included with the MOU language.

MS. FOY: Okay. I'm sorry. Misunderstanding. And was that --

MR. CHATWIN: We haven't discussed that --

MS. FOY: -- incorporated in the context of what we worked on already?

MR. RIZZARDI: Well, it hasn't yet

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been discussed but it was related, or hasn't been discussed --

MS. FOY: Right.

MR. RIZZARDI: -- in terms of its specific language.

MS. FOY: Okay.

MR. RIZZARDI: But the topic was discussed in part.

MR. HOLLIDAY: So it sounds like we're at cross-purposes here.

MS. FOY: We are, yes.

MR. RIZZARDI: Correct.

MR. HOLLIDAY: Cathy's trying to work on items for the next meeting and new business, and we have old business from Monday --

MS. FOY: Right.

MR. RIZZARDI: Correct.

MR. HOLLIDAY: -- to Tuesday that Keith suggested we review some of this. Today's committee won't have time to go over -
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MS. FOY: Yes. Right.

MR. RIZZARDI: Right.

MR. HOLLIDAY: -- won't have a chance to do that.

MR. RIZZARDI: Right.

MR. HOLLIDAY: So there's two things that need to be resolved.

MS. FOY: We can get back to --

MR. RIZZARDI: I was hoping, at least for the MOU, and then Tony has his language that we can put up there, and if you want to punt it to the next committee, that's what they do.

MS. FOY: Okay. Well, then let's --

MR. HOLLIDAY: Why don't you finish your thought about your committees' activities from this afternoon and then knock that out --

MS. FOY: And then --

MR. HOLLIDAY: -- and then we can roll back to the Deepwater Horizon stuff.

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MS. FOY: So on that note, are there any further agenda items to put on the next agenda either in subcommittee or in full committee. And it's not your last chance, you can e-mail --

MR. CATES: I have a suggestion, or a question, which it may be. What do you do when you have a protected species that's in state waters and NOAA has jurisdiction over it, but the state puts barriers to protection, especially under emergency action. Is there, would that be an agenda item, or I mean --

MR. LECKY: I'd need an example.

MS. FOY: Yes, I'm having a hard time coming up with that one.

MR. CATES: The example is a ship goes aground, damages the coral reef --

MS. FOY: We're not talking about a listed species?

MR. CATES: Hypothetically, what if it is a listed --

MS. FOY: Are you talking about

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maybe critical habitat designation?

MR. CATES: Right. I mean, this has happened in Hawaii. NOAA people in charge of coral say you've got to, we got to take action, shipowner says, yes, we have to take action, and the state intervenes and says, you've got to do an EIS. And NOAA and the shipowner go, well, they'll be dead by the time the EIS is done. What do you do?

MS. FOY: And EIS, we're talking NEPA, right, Jim?

MR. CATES: No, EIS is state.

MR. LECKY: He's talking about state, take over the state authority.

MR. CATES: But what do you -- what does the agency do when the state puts up a barrier to take protective action on a species?

MR. HOLLIDAY: Get an attorney. Federal supremacy clause.

MR. LECKY: I'd wash my hands because it's specifically in service of their

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authority. I think it -- I'm trying to think if a situation like that has arisen anyplace else.

Typically our concern with states are over state inactions, and we try and engage them to act. Who in the state is putting up a barrier, you know, I --

MR. CATES: Maybe it's not for the committee, but --

MR. LECKY: I think, in that situation we would just go the state and try and work it out and try to impress upon them that, look, you're putting an impediment in here that's going to have a really negative outcome and we're all going to suffer, and try and convince them to make a different decision.

MR. HOLLIDAY: Sounds like a technical question that might have an answer, but not so much --

MS. FOY: Not necessarily a --

MR. HOLLIDAY: -- an agenda topic,

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a full-blown agenda topic.

MS. FOY: Yes. So I'm going to review what we've got so far for agenda items.

Our first topic of business I think is to go back through our motions and have a report back from NMFS on the success of each, or what measures have been done to pursue each.

Then, second, we have Tony's critical habitat designation, particularly in respect to examples that are relevant in the Gulf.

Bill, I'm not exactly sure what yours was, but we have --

MR. DEWEY: I sent it to Heidi.

MS. FOY: You sent it to Heidi?

MS. LOVETT: Oh, you sent it? Okay.

MS. FOY: Perfect. And then --

MR. RIZZARDI: Incorporating bills into the document I sent to you.

MS. FOY: Right.

MR. RIZZARDI: So the document

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that --

MS. FOY: Right.

MR. RIZZARDI: -- I just sent to you a few moments ago includes his, includes Tony's, includes everything that we discussed yesterday.

MS. LOVETT: And I think I was sent the new topic --

MR. DEWEY: What I sent Heidi was specific to new business.

MS. FOY: Okay. Yes, I understand that. I would suggest that Tony's critical habitat designations be referred to the full committee because I think that the full topics are going to be on everybody's mind, and it's going to be extremely relevant to the full committee.

The other two items I would suggest be handled in subcommittee. Paul?

MR. CLAMPITT: We're discussing agenda --

MS. FOY: We're discussing items

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on the agenda for the next committee. Yes, sir?

MR. CLAMPITT: I wonder if we should discuss the appropriateness of using climate change for the designating of species for the ESA listing.

MS. FOY: I think we visited that already today.

MR. CLAMPITT: We did?

MS. FOY: Did we not, Jim?

MR. LECKY: Well, I talked more about it in the context of Section 7 than I did in listings.

MR. CLAMPITT: Because I see a trend as a never-ending -- I don't know what we can do about it. Maybe there's too much of a political context for our purposes. I mean, you know, 83 coral species and anyone can add.

MS. FOY: I would think that that's more of a statutory thing that needs to be taken up with Congress. I don't know what the purpose of having that on the agenda would

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be, other than extremely frustrating for us. It would be -- I don't know that it would get to the point where we --

MR. HOLLIDAY: There is guidance. I mean, General Counsel has developed some guidance, I mean, at Interior and at NOAA, with respect to --

MS. FOY: Well --

MR. HOLLIDAY: -- using climate and --

MR. RIZZARDI: I do think it's worth a conversation.

MS. FOY: You think it's worth a conversation?

MR. RIZZARDI: But not -- if I could just help distill the issue. Under factor A of the listing criteria, the change in habitat, every species that is facing changes in habitat due to climate change could potentially be warranted for listing.

And yet there's nothing that we can do, at a human level, to help that

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species. It's not the usual scenario of habitat due to development encroachment or habitat due to some human activity. It's a global problem.

And that, I do think, is something that would warrant discussion. I'm not even sure it's appropriate for the next meeting, it might be something we take up the one after that, recognizing that next meeting we should have our hands full with Deepwater Horizon issues and that it carries over to that.

MS. FOY: Would you be happy with that? Put it on the list?

MR. CLAMPITT: Yes, I mean, you know, you were asking for new business and I'm just wondering -- and, you know, I haven't been here long enough to know if it's been discussed.

MR. LECKY: Well, yes, I mean, climate change is clearly a risk for some species. The IPCC report says we're going to lose 30 percent of the world's species due to

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climate change, there's going to be winners, there's going to be losers --

MR. CLAMPITT: Right.

MR. LECKY: -- so it's clearly a risk. Habitat loss is one factor, the fifth factor is anything else you can think of.

MR. CLAMPITT: Right.

MR. LECKY: So, yes, I don't know how'd you take it off the tab. I mean, certainly, we'd really like to have some good information that a species is at risk as a result of climate change. But again the petition process is a low bar.

MR. RIZZARDI: Right. And it may be another one of those areas where we encourage NOAA to confer with Congress and make it so that climate change is not the singular basis for listing a species.

MR. LECKY: So I think it takes a look, I mean, the outcome from looking at climate change scenarios are if that's the only threat that's really clearly identified,

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is, we would take a hard look at, okay, well, how sure are we about the climate change modeling and how that demonstrates this risk?

Is it, you know, is it solid, or is it just sort of theoretical?

MR. CLAMPITT: That's a very interesting conversation.

MR. LECKY: Yes, so, you know, if it is speculative, that's the word I was looking for, if it's really speculative and the modeling's really weak, then we would argue no, we're not going to list it for that.

But I think saying that we're not going to take a look at the question would be harder to justify.

MR. CLAMPITT: Yes. And we don't have to do it next, but I think it's --

MS. FOY: Yes, Mark?

MR. HOLLIDAY: He's got the floor.

MS. FOY: Sorry.

MR. HOLLIDAY: I was just raising my hand.

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MR. CLAMPITT: We may not have to look at it next, at the next meeting, but I think we need to have a discussion.

MS. LOVETT: Does that capture? I just can't --

MR. RIZZARDI: Yes.

MR. CATES: Do you have a recommendation on who could give us an unbiased opinion on climate change?

(Laughter.)

MR. LECKY: Quick and easy route, no. You mean about whether it's happening or not?

MS. FOY: Randy, I'll say okay, but only on the condition that you believe him.

(Laughter.)

Okay. So, actually --

MR. CATES: You saying the Environmental Defense Fund?

MS. FOY: Yes.

MR. RIZZARDI: Would it be

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possible for us to convene a small group of us during the 8:30 to 10:30 slot, when some of the other subcommittees are meeting, just to go over what's left?

MR. HOLLIDAY: Yes, I had my hand raised to try to suggest, because a number of people need to leave this meeting and we've not gotten to that point.

MS. FOY: Right.

MR. HOLLIDAY: I would suggest you e-mail the document this evening to people, they get back and take a look at it so they're better prepared to use that window of time in the morning. And we'll find a, I'm not sure where, but we'll find some space to meet because we have the two other subcommittees meeting.

MS. FOY: Perfect.

MR. HOLLIDAY: So that would relieve the anglers to get to their angling, and give them a chance to look at it overnight and be prepared to talk -- we're going to

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start at 8:00 tomorrow morning to accommodate our lunch plans, so.

MR. CHATWIN: Are any of the subcommittees that are meeting going to be discussing Deepwater Horizon or recommendations --

MR. HOLLIDAY: No, no.

MR. CHATWIN: Okay.

MR. DEWEY: That's what this is about, isn't it?

MR. HOLLIDAY: That's what would be the suggestion, to complete the discussion of that. And the draft --

MS. FOY: They're going to do strategic planning and commerce.

MR. HOLLIDAY: -- with Keith has been accumulating comments, input on it.

So, actually, if you could, it's 5:06 and I think people are somewhat anxious to go.

MR. RIZZARDI: And then just from an administrative standpoint --

MS. FOY: Who do you want this

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emailed to?

MR. RIZZARDI: I guess just send it to the entire MAFAC for now and just say that it's a draft and then we'll all get it.

And then as an administrative matter, could I ask that you would create a subcommittee e-mail macro, the same way you have one for MAFAC?

MS. LOVETT: Okay, but I can't do that --

MR. RIZZARDI: I understand you can't do that today. For a future meeting, could we have somebody create a macro for the subcommittees?

MS. LOVETT: Okay. Yes.

MS. FOY: Well, timeout, Keith. The subcommittees really have a flexible --

MR. RIZZARDI: Membership, yes.

MS. FOY: -- attendance. So I don't know if that works.

MR. RIZZARDI: Okay.

MS. FOY: Depending on what issues

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are on the floor.

MS. LOVETT: So this is --

MS. FOY: Good. I'm going to call
it adjourned.

(Whereupon, the foregoing matter
was concluded at 5:09 p.m.)

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